

No. 15809

United States
Court of Appeals
for the Ninth Circuit

JOE PALERMO,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record
In Two Volumes

Volume II
(Pages 325 to 580)

Appeal from the United States District Court for the
Eastern District of Washington,
Southern Division.

FILED

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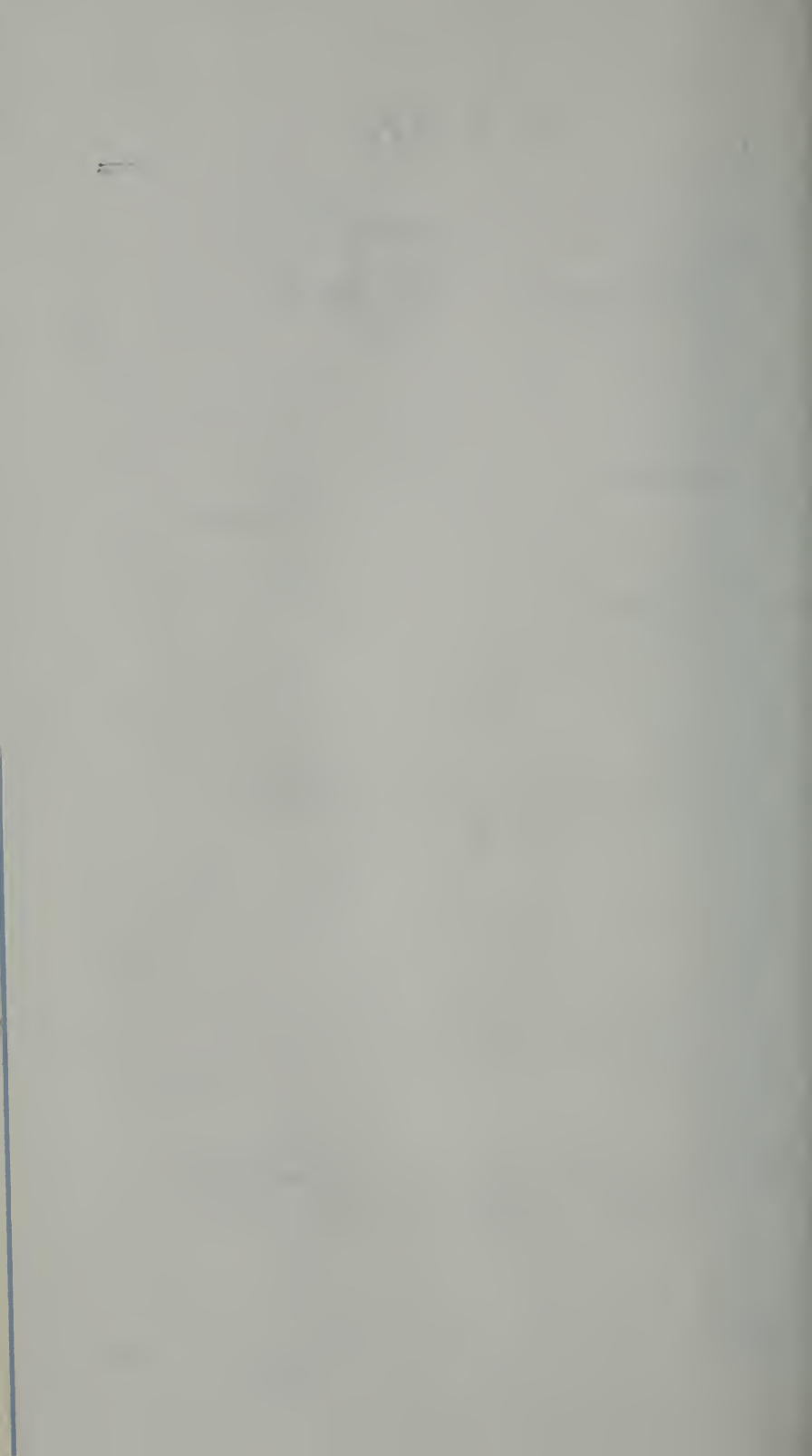
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(Testimony of Paul Simonson.)

July 26, 1957—10:00 A.M.

The Court: You may proceed.

Mr. Bantz: May I have Plaintiff's Exhibits 66, 88, 23, 10 and 13. Your Honor, I have just a few questions of Mr. Simonson and I will be finished here. [373]

The Court: Yes, all right.

Q. Mr. Simonson, handing you Plaintiff's Exhibit 23, would you state—now, this is the ledger account at the Security State Bank of White Salmon, which is now the National Bank of Commerce, is that correct? A. That's correct.

Q. Would you look on the exhibit before you, which is Plaintiff's Exhibit 23, and tell me the balance, the cash balance in the account of Mr. Palermo for the date of January 1, 1950?

A. The nearest I have on this ledger sheet to that is December 30, 1949. The balance is \$8,800.07.

Q. And what is the balance on December 31, 1950?

A. The closest balance I have is December 29, 1950, and the balance then is \$21,114.31.

Q. Now, what is the balance on December 31, 1951?

A. The balance in December 31, 1951, is \$44,699.97.

Q. And what is the balance for the year ending December 31, 1952?

A. The balance on December 31, 1952, is \$57,349.16.

(Testimony of Paul Simonson.)

Q. And what is the balance ending December 31, 1953?

A. The balance on December 31, 1953, is \$64,-487.37.

The Court: What bank is that, Mr. Simonson?

A. The National Bank of Commerce, formerly the Security State Bank. [374]

The Court: Of White Salmon?

A. White Salmon.

Q. Now, handing you Plaintiff's Exhibit 13, will you state what that exhibit is?

A. This is ledger sheet to the checking account of Joe Palermo for the National Bank of Stevenson.

Q. Now, referring to Plaintiff's Exhibit 13, will you state what it shows as the cash balance for the Bank of Stevenson for the Year 1950?

A. The balance in December 30th, 1950, was \$10,665.73.

Q. Now, is there a balance on there for the year ending December 31, 1951?

A. There is not.

Q. What is the final—

A. Excuse me, sir—no. No, there is not.

Q. When is the final closing date of that account then?

A. January 9, 1951, and then February, '52, the account was reopened.

Q. Well, now, in Plaintiff's Exhibit 13, is there a bank balance in the Year of 1952?

A. There is.

(Testimony of Paul Simonson.)

Q. And what is the last date in 1952 on that exhibit that shows a bank balance?

A. December 23, 1952.

Q. And what is the bank balance of that [375] date?

A. \$1,857.60.

Q. Is there any balance for the Year of 1953?

A. There is a balance, yes, sir.

Q. And what is the balance of the closing date?

A. The last date with the balance in 1953 is February 19, 1953, \$67.09.

Q. Now, handing you Plaintiff's Exhibit 10, would you please examine that and state what that exhibit is?

A. This is a deposit ticket and ledger sheet to a savings account of Joe and Bertha Palermo in the Bank of Stevenson.

Q. And what years does it cover, Mr. Simonson?

A. It starts August 20, 1952, and goes to January 3, 1956.

Q. What is the starting balance on that account with the date?

A. The starting balance, August 20, 1952, for \$10,000.00.

Q. All right, on December 31, 1952, what is the balance?

A. \$10,066.66.

Q. And what is the balance on December 31, 1953?

A. \$10,268.99.

Q. Handing you Plaintiff's Exhibit 66, would you please state what that is?

A. That is the net worth trace of Joe and Bertha Palermo for the Years 1949 through 1953.

(Testimony of Paul Simonson.)

Q. Yesterday you testified as to the Year of 1952, there being a difference of \$10,000.00? [376]

A. That is correct.

Q. Do you recall that?

A. That is correct.

Q. Now, Mr. Simonson, when you first find out that the \$10,000.00 was in the Bank of Stevenson, which is shown in Plaintiff's Exhibit No. 10, when did you first find out about that?

A. About March, 1955.

Q. And where was it that you found out about it?

A. At the Bank of Stevenson.

Q. And in what form was that \$10,000.00?

A. In the savings account at the Bank of Stevenson.

Q. And that is the \$10,000.00 we are talking about in Plaintiff's Exhibit 10?

A. That is correct.

Q. Had you at any time prior to that date known of the \$10,000.00 in the savings account?

A. No.

Q. At no time? A. No.

The Court: Is that 1955?

A. Yes.

The Court: Did you give the month?

A. March, 1955.

Q. But the \$10,000.00 we are talking about concerns the [377] Years 1952 and 1953?

A. Yes, it does.

Q. Handing you Plaintiff's Exhibit 88, would you please state what 88 is?

A. This is summary of receipts of Joe Palermo

(Testimony of Paul Simonson.)

for the Year 1952, showing total checks, total recorded in the books, not recorded, deposited and not deposited.

Q. Mr. Simonson, can you tell from Plaintiff's Exhibit 88, insofar as the evidence is concerned, how many customers or individuals or companies did Mr. Palermo deal with on a business basis there during the Year of 1952 concerning his logging operations? A. Twelve. Twelve.

Q. Now, that is twelve individuals or companies?

A. Yes, twelve individuals or companies.

Q. All right, how many of those individuals and companies was on his books and records?

A. He recorded income from five of those customers in 1952.

Q. Well, then, there was seven that wasn't recorded? A. That is correct.

Mr. Bantz: You may examine, Mr. Moore.

Cross-Examination

By Mr. Moore:

Q. Mr. Simonson, on your direct examination you have testified to a bank account at Stevenson in 1950 and 1951 and a [378] savings account at Stevenson thereafter? A. That is correct.

Q. And you have testified with reference to when you learned of the existence of that savings account? A. I have.

Q. You have also testified that exhibits—could I have 50 and 51—you have also testified with reference to 86, 87, 88 and 89 being your summaries?

A. Yes, sir.

(Testimony of Paul Simonson.)

Q. And stated that these were the summaries—these are copies of summaries which you submitted to your superiors? A. That is correct.

Q. Following the completion of your investigation of Mr. Palermo? A. That is correct.

Q. Are these summaries the only reports that you submitted to your superiors? A. No.

Q. Did you submit reports with reference to the savings and checking accounts at Stevenson?

A. Yes, I did.

Q. May I see copies of those reports, if you have them? A. I do not.

Mr. Bantz: Your Honor, I am going to object to anything that he has not—maybe we better dismiss the jury. [379]

The Court: Yes. The jury will step outside.

(Whereupon, the following proceedings occurred in the absence of the jury:)

Mr. Bantz: I would object, your Honor, to him asking for any report that he made with the \$10,000.00, that he made to his superior, on the grounds that he has testified that his summaries concerning that have been made from the evidence that in trial, and there is no showing that there is any other matter that is concerned here. His veracity or truthfulness is apparently not at issue, and it is a matter of the record here. I could see nothing that we should be turning over unless he has testified to something on direct examination. A matter that he reports to his superior certainly is not in issue here at this time.

(Testimony of Paul Simonson.)

The Court: Well, this \$10,000.00 item, I assume that the purpose of showing that it wasn't discovered by Mr. Simonson until March, 1955, since it wasn't disclosed to him, the inference would be that it would be covered up by the defendant and he was holding it out.

Mr. Bantz: No.

The Court: You are entitled to point out to the jury he was in good faith, even at the time he turned in the net worth statement, and that he still held out this \$10,000.00 account at the Stevenson Bank, and if he held it out of his report counsel is entitled to say that Mr. Palermo told him [380] so it could be in his report and he may have excluded a report of it, and he may have said that Mr. Palermo told him about the \$10,000.00, and he had a right to go down and see, and counsel is entitled to bring that out. It is a matter of credibility, very much a question of credibility.

Mr. Bantz: All right, is it limited to the \$10,000.00 that he is asking about?

The Court: Well, as to these other matters, I don't know whether Mr. Moore intends to ask for all of his reports made in the course of his investigation or not. This question at this time is limited to the savings account.

Mr. Moore: I am asking for any report in which any reference is made to the Stevenson checking or savings accounts, with reference to its existence or nonexistence.

The Court: Why the checking account?

(Testimony of Paul Simonson.)

Mr. Moore: Because he has already tied it in to show the Stevenson Bank checking account was transferred to the savings account in the amount of \$10,000.00.

The Court: Yes, I remember it was transferred from the checking account to the savings account. Yes, I see. I think while it isn't involved in your present question you may as well bring it out in the open now as to whether you intend to ask for other reports concerning these other matters that he has testified to, and I think Mr. Bantz' objection is there, that he was only making deductions by [381] rearranging the data that you gave him in acting for the defendant, and so it would be immaterial what reports he made, unless you want to take the position that he didn't actually receive them or they were different than what he received.

Mr. Bantz: Yes, that is right. I think his testimony has been limited and I have tried to limit it to matters given us by the defendant or what has been put in evidence here in connection with the trial and admitted. Now, he drew his summaries from that. Now, in the case of the \$10,000.00, we will submit the report. I am assuming that there was a report. He has stated that there has been one and we will get that to you.

The Court: Checking and savings account in the Stevenson Bank, is it—what is the name of that bank?

Mr. Bantz: Stevenson Bank.

The Court: Is that a National or State Bank?

(Testimony of Paul Simonson.)

A. State bank.

Mr. Bantz: Now, if he is going to do this, we want to argue this. I don't want him to take the whole file up and start reading from it. Your Honor, I am not that naive and we will take out of that file what you are asking us to do now.

Mr. Moore: I don't think that I want any others, your Honor, because I think that the one thing I want to question him about is with reference to an actual statement [382] which he made, and I feel sure that on cross-examination we can clear it up.

Mr. Bantz: May we have five minutes to look at our records?

The Court: I will just recess subject to all. I think I will give you a recess and give you a chance to have Mr. Moore pick out what he wants now, and I think it is clear. I think it is the checking and savings account in the Stevenson State Bank, and give Mr. Moore a chance to look them over and make up his mind what he wants to use within reason, and I don't think they are too voluminous.

Mr. Bantz: Let me ask you this, your Honor, that one page refers to one and one to the other. May I take off one part so I can give him what he wants?

The Court: Yes, you can paste something over the other.

Mr. Bantz: Thank you.

The Court: I think that the defense counsel

(Testimony of Paul Simonson.)

might agree to the same arrangement that we had in the McDaniels case. Fortunately, we weren't called upon to instruct there. And we had the understanding that if there were mixed materials and interwoven matters and there were certain matters that the defense counsel asked and there was a question as to whether it should be material, the Court should look it over and the Court would pass upon it and determine whether it [383] comes within the defense or not. All right, the court will recess subject to call.

(Whereupon, after recess the following proceedings occurred before the jury:)

The Clerk: Marking Defendant's 97, your Honor.

Q. (By Mr. Moore): Mr. Simonson, with reference to the Bank of Stevenson checking and savings accounts, it has been your testimony here that the savings account did not appear on Plaintiff's Exhibit 66 for the Years '52 and '53, isn't that correct? A. That is correct.

Q. Now, for those prior years what does that exhibit show insofar as any bank account in the Bank of Stevenson?

A. It shows that there was a bank account in the Bank of Stevenson at the end of 1950 and 1951.

Q. In the amount of how much?

A. \$10,125.78.

Q. Was there a bank account there at the end of 1950?

(Testimony of Paul Simonson.)

A. There was. I believe that the exhibit will show.

Q. Does it show here?

A. Yes, it shows here.

Q. How much? A. \$10,125.78.

Q. And that is the net worth statement which I delivered to you and Mr. Blankenship in December, 1954? [384]

A. That is correct.

Q. And Mr. Blankenship had started his investigation in September of 1954?

A. I believe you are right; yes, sir.

Q. And you had started on December 14th, of 1954?

A. That is correct.

Q. And in the course of your dealings with Mr. Brown you were notified that Mr. Brown had newly come into the picture insofar as an accountant with reference to Mr. Palermo?

A. I think that Mr. Blankenship advised me that Mr. Brown was working on it.

Q. And further that you received that net worth statement in December from myself, having requested it?

A. I am sure that Mr. Blankenship requested a net worth statement.

Q. And the other information was submitted to you and Mr. Blankenship consisting of profit and loss statements; net worth, reported income and indicated income were all so far as you know prepared by Mr. Brown from available records and submitted in December of 1954?

A. That is correct.

(Testimony of Paul Simonson.)

Q. And all at the request of you and Mr. Blankenship?

A. At the request of Mr. Blankenship or myself.

Q. Now, with reference to this \$10,000.00 omission from the [385] net worth statement for the end of 1952, you will recall, will you not, that you received that and then subsequently on a number of occasions you and Mr. Blankenship asked me if that net worth statement was correct insofar as we knew?

A. That is correct.

Q. And you asked me on a number of occasions if there wasn't some item missing?

A. Yes, I did. Yes, I did, Mr. Moore.

Q. And after you had asked me about that on two or three occasions it is true, is it not, that I lost my temper and asked you if you would kindly quit playing cute, or words to that effect, and tell me what it was, was omitted so that we could get it in?

A. You did ask me what was omitted.

Q. And I told you that I wanted to know what it was so that I could get it in there?

A. Yes, you asked me what it was.

Q. And didn't I advise you and ask you if there was something I could get into the net worth statement?

A. Yes, you asked me and I told you it was the savings account.

Q. And you told me? A. Yes.

Q. And I told you what? [386]

A. You told me that you knew about the account

(Testimony of Paul Simonson.)

and that you were going to pay the tax on that account.

Q. That I knew about the account?

A. You told me that you thought you knew about it and that it had been overlooked, that you knew about that, I don't know if this was the account but you knew about that account and you intended to pay tax on it.

Q. In any event, I advised you that that account was omitted by accident? A. Yes, you did.

Q. And that was the result of a mistake on my part and Mr. Brown's part and misunderstanding by Mr. Brown and Mr. Palermo?

A. Yes, you did.

Q. In questioning and answering?

A. Yes, you.

Q. Now, then, in the course of your investigation did you also learn from Mr. Blankenship when you first started your investigation that there was a bank account of any kind at the Bank of Stevenson?

A. As far as the bank account, the checking account, I think we were aware of that.

Q. You knew in December when you received this net worth statement that there was a bank account at Stevenson of some kind? [387]

A. Yes, we did. It is indicated on here.

Q. And the first time you went down there was in March? A. I think it was March, 1955.

Q. Did Mr. Blankenship advise you that when he first talked to Mr. Palermo that he had dis-

(Testimony of Paul Simonson.)

cussed the existence of the deposits at the Bank of Stevenson?

A. Excuse me, sir, I didn't hear your question.

Q. Did Mr. Blankenship tell you when you got into the case that when he first talked with Mr. Palermo that he discussed with Mr. Palermo the deposit of funds which Mr. Palermo may have had down at the Bank of Stevenson?

A. I don't recall but I think as I recall he knew of a checking account that he had down at Stevenson.

Q. Did he advise you that Mr. Palermo had told him that he had some money down at the Bank of Stevenson and that he didn't know how much it was but if he wanted to find out he could go down and find out that?

A. I don't recall discussing that with Mr. Blankenship, no.

Q. Did Mr. Blankenship advise you that he had asked Mr. Palermo for a savings account book?

A. He did, yes.

Q. And did he advise you that Mr. Palermo told him that he had one but he did not know where it was?

A. No, Mr. Blankenship did not advise me of that.

Q. He did not? [388]

A. And I don't recall any conversation like that.

Q. Now, going into Exhibits 86, 87, 88 and 89, Exhibit 86 being your summary with reference to 1950, according to your summary described by 86

(Testimony of Paul Simonson.)

in 1950, Mr. Palermo received income from how many sources?

A. Fifty-three—I mean fifty-three checks—I mean 1, 2——

Q. No, he received income from how many sources in 1950?

A. Do you mean how many people paid him?

Q. Yes, that's right.

A. Oh, seven people.

Q. And insofar as your summary discloses, his books showed that he received money from six of those people?

A. That is correct.

Q. And the one that was omitted was his father-in-law, Mr. Zunke?

A. That is correct.

Q. Now, you made a tabulation which was placed in evidence the other day concerning the number of checks received by Mr. Palermo for income items and the number of checks that were placed in the book that he had?

A. No, I think mine shows the number of checks omitted from the books and then the number of income checks he received.

Q. And then the percentage?

A. Yes.

Q. That got in the books and didn't get in the books?

A. Yes, that is correct. [389]

Q. Have you made a percentage recap of the gross income and the percentage that got in the books?

A. No, I have not.

Q. On any one of the four years?

A. On none of the four years, no, I have not.

Q. Now, in 1950, Mr. Simonson, Mr. Palermo

(Testimony of Paul Simonson.)

showed in his books that he received \$900.00 from the S. D. S. Lumber Company?

A. That is correct.

Q. And how much did he actually receive in that year from the S. D. S. Lumber Company?

A. He actually received in that year from the evidence we could find \$148.58 and I show he overstated his income for that.

Q. Did he overstate his income in any other respect on receipts in 1950? A. Yes, he did.

Q. What other receipts?

A. If you will turn to Mt. Adams Loggers Association—I don't mean an over statement in total, there is an understatement in total, but he recorded in his book \$884.68 when the check I found was \$884.08, so that check was overstated on his records by sixty cents. Then, there was another one where he recorded \$448.81 and the amount of the check we found was \$416.44 for an overstatement on [390] that check of \$32.37.

Q. And those are the overstatements for that year?

A. On McCormick Lumber Company I think that is the—the total amount not recorded on the books, the net amount was \$3,214.40 not recorded on the books but I did find two checks for which I could—recorded on the books which I could tie in no place with any receipts. I showed them in McCormick. However, there were other checks from McCormick which I could not find on the account

(Testimony of Paul Simonson.)

and in the total there was \$3,214.40 understated on the books.

Q. In other words, in his books he showed \$2,-784.00 that you could not find any record of anywhere?

A. That is correct. And in making my computation I deducted that amount I showed unreported and the net unrecorded on the books is \$2,300.00.

Q. Now, in checking over the summaries of 1950 as compared with Mr. Palermo's 1950 income tax return and the information given to Mr. Bates for the preparation of the income tax, do I understand it that the total number of checks or amounts recorded in Mr. Palermo's book under the heading "gross earnings" is exactly the amount that was placed in gross earnings on his income tax return?

A. The amount recorded in Palermo's books is the same as on the return, I am sure that it is.

Q. And that is the same figure that was used by Mr. Bates? [391]

A. By Mr. Bates, yes.

Q. Now, going back to the deposits to the banks in 1950. you showed one check of January 12th from McCormick for \$868.50 which you listed as non-income?

A. Or unidentified.

Q. Or unidentified? A. Yes.

Q. Now, the purpose of that was what?

A. To exclude those items as part of the income we had identified because it wasn't properly identified I felt as income because we did not have Mc-

(Testimony of Paul Simonson.)

Cormick's record for that period of January, 1950, to indicate what the payment was for.

Q. Do you mean when you went to McCormick's to get copies of the invoices and cancelled checks, Mr. McCormick had no records or cancelled checks for that period?

A. The only record I think we had of McCormick was starting March, 1950.

Q. There doesn't seem to be much question but what the \$868.56 is income, does there?

A. I have no idea what it is.

Q. Now, with reference to 1951 and your summary as described by Exhibit 87, is it——

A. That is correct.

Q. Now, in that year how many sources of income did Mr. [392] Palermo have?

A. He had income from five individuals or firms.

Q. And how many of those five were reflected on his books?

A. He recorded income at least from four of those people.

The Court: What year is this, now, Mr. Simonson?

A. 1951.

Q. And the amount of money that wasn't reflected in his book from that one individual was how much? A. \$445.85.

Q. In other words, he did business in 1951 with five companies or individuals, his books showed

(Testimony of Paul Simonson.)

that he did business with four of them and the one that was omitted Mr. Nickols paid him \$445.85?

A. That is correct.

Q. Was there any overstatement in 1951 by Mr. Palermo?

A. May I check, Mr. Moore? I don't find any, no.

Q. There was an error, was there not in the report from Mt. Adams Loggers in that one check for \$789.74 from Mt. Adams Loggers was put in the book as being from McCormick?

A. Yes, the books actually didn't reflect any receipts from Mt. Adams Loggers in 1951, except I did find this check from Mt. Adams for \$789.74 marked "McCormick" and finding a check from Mt. Adams in the exact amount—

Q. For the same date?

A. —identified I reported one of the checks for Mt. Adams. [393]

Q. For the same date?

A. For the same date approximately, yes.

Q. In 1950, you can go back to Exhibit 86 for a moment, there was a similar error, was there not, Mt. Adams Loggers, the record shows that he put Kingley in the book for the three items that he got from Mt. Adams Loggers, in the book?

A. I connected them up with Mt. Adams because the amounts were so similar. While his records didn't reflect any receipts from Mt. Adams, I assumed that the Kingley checks were Mt. Adams checks, since it wasn't an association.

(Testimony of Paul Simonson.)

Q. With reference to No. 88—is it for 1952?

A. Yes, sir.

Q. Was there any overstatement in that year?

A. On McCormick Lumber Company I did find this: While a total income not recorded on the books was \$4,894.53, on July 10th, 1952, I found payment on McCormick records of \$1,293.26. About that time Mr. Palermo recorded on his books from McCormick \$2,350.00, which is a difference—an overstatement of \$1,062.74. The same is true with the check of May 10th, 1952, which indicates that the overstatement of income on that particular check was \$96.40. However, the omitted checks subtracting those overstatements from the omitted checks, the understatement on the records is \$4,894.53. [394]

Q. Now, concerning the percentages, Mr. Simonson, did you by any chance work out percentages annually for the full four years which would show the percentage of money received by Mr. Palermo which was deposited in his bank accounts?

A. No. The only percentages that I made out was in relation to the physical number of checks which he received, that is the only percentages I worked on.

Q. With reference to the Exhibit 13, back on the Bank of Stevenson for the moment, I don't believe that you quite have this correct this morning when you were testifying on direct examination. I think that you testified that this checking account had been closed out on January 9th of 1951?

A. That is the way it appears here.

(Testimony of Paul Simonson.)

Q. Well, I will point out to you on January 9th, 1951, there was a balance of \$10,125.78 and there were no more entries until February 13, 1952, when you have the same balance?

A. That is correct. I made a mistake in reading it off. The final balance I show on this sheet of \$10,125.78, that was actually carried forward on this sheet when it was transferred at the end and there was this balance of \$10,125.78.

Q. And then that was closed out August [395] 20th, 1952? A. That is correct.

Q. Now, to explain the discrepancy here on your figures that you have submitted to make a determination of the underreporting of net income you have established that in this case by making changes only in the gross amount of money received by Mr. Palermo? A. That is correct.

Q. You have not made any changes as far as the expenses? A. No, I have not.

Q. And the distinction between that and the figures submitted to you by us in December, 1954, as reflected on the indicated net income figures and the net worth statements, to some extent are different because we modified the expense items?

A. That is correct, I think, in 1951 and 1952 you change it considerably.

Q. As an example of that it is true, is it not, that in 1950 I think it was—could I have 33, 4, 5 and 6. I believe it was in 1950 that there was a bad debt taken, or was that a subsequent year?

(Testimony of Paul Simonson.)

A. I think perhaps 1952, but I couldn't be certain.

Q. Yes. In the preparation of the return in 1952, Mr. Bates reflected a bad debt of \$5,508?

A. Yes.

Q. Which in the recap submitted to you Mr. Brown took it out? [396]

A. May I have the recap? I don't recall whether he did or not.

Mr. Moore: I am sorry, I thought you had that up there.

Mr. Velikanje: 67.

Q. Yes, Plaintiff's Exhibit 67.

A. You are correct, yes.

Q. And that is an example of one of the reasons for this distinction in the net income that we have?

A. That is an example for the year 1952, yes.

Q. And there are other modifications in all of the years? A. There are, yes.

Q. And so as a practical matter, the matter that we have attempted to work out heretofore has been with reference to the actual tax liability of Mr. Palermo, that Mr. Brown has been submitting to you? A. That I think is correct.

Q. And it is somewhat different than what the indictment reads here? A. It is, yes.

Q. Or the method of proof by which you have shown an underreporting? A. Yes.

Q. And insofar as a final computation adjusting both income and expenses, that has not been accomplished as [397] yet by your office?

(Testimony of Paul Simonson.)

A. I think it has been accomplished by our office, yes.

Q. But no information has been conveyed to the taxpayer, is that right?

A. I don't recall. I think perhaps we did advise probably nearly correct figures on civil cases, I don't recall, we had some discussion.

Q. There were discussions but not final?

A. Not final.

Mr. Blantz: Your Honor, I would object to any further discussion about the civil case, it has nothing to do with the present case.

The Court: No, it is not directly involved here.

Q. You still have the summaries there?

A. I do, yes.

Q. On 1950 on the McCormick sheet I think you will find an error. This is the summary that you made up there? A. Yes, uh-huh.

Q. Under McCormick on June 7th you show a figure of \$2,220.00; that should be \$2,200.00, should it not? A. May I have Exhibit 71?

The Clerk: Yes. (Handing to witness.)

A. Yes, receipts recorded in the book are \$2,200.00 instead of \$2,220.00. I have checked that addition across and that apparently is a typographical error because the subtraction [398] is not recorded in the proper amount.

Q. Now, according to your recollection, when did you first see Mr. Palermo's books for the years in question here?

A. The first I ever saw of the books or part of

(Testimony of Paul Simonson.)

the books, I don't recall how many books there were there, was December 28, 1954.

Q. In the Goldendale courthouse? A. Yes.

Q. And at this meeting you had requested that those books be brought?

A. I don't recall whether or not we requested it but I probably did.

Q. But in any event you had them there?

A. Yes, you had them.

Q. And you were given an opportunity to look over them completely at that time?

A. We looked over them but I don't think we looked over them completely.

Q. And you saw them again when?

A. I don't recall the date but I think sometime in 1955 and I think it was sometime in 1955 at your office probably about June. I may have seen them prior to that, too.

Q. Now, do you recall whether or not there were ever any references in those books, other than the pages that were headed "gross earnings," showing receipts or accounts [399] receivable from saw mills?

A. He had other references in the book. Yes, he did, but I don't recall exactly the nature of those references. They were—they happened to be memorandum records for his own purposes.

Q. And when you requested photostats the only request that you gave us was for the pages for gross earnings?

(Testimony of Paul Simonson.)

A. The pages showing gross earnings which totaled to that shown on the tax returns.

Q. Well, as a matter of fact, Mr. Simonson, you and Mr. Blankenship and I got together with the books and you pointed out the pages you wanted and we put a marker on them?

A. I probably did.

Q. With reference to the tax returns themselves for 1950, 1951, 1952, and 1953, disregarding the accuracy of the figures that are put in there, that is compared with whether it was a true expense of \$180.00 or a true receipt of \$60,000.00 or \$100,000.00, the figures that are used, are there any errors in those returns?

A. I do know of one error, yes.

Q. What error is that?

A. I think it is in the Year of 1953 on the Schedule "C."

Q. What is the error?

A. Oh, in subtracting \$34,666.73 from gross receipts of [400] \$102,901.72, the return reflects a balance of \$69,234.99, and I think correctly that should read sixty-eight thousand instead of sixty-nine thousand.

Q. In other words that would be a mistake in the preparation of the return?

A. Yes, it would be.

Q. And is that the only mistake that you could find in any of those returns?

A. That is the only one that I recall, it would be unless I withdrew them and checked.

(Testimony of Paul Simonson.)

Q. Have you checked at all?

A. I am sure that we have checked but there is a possibility of other errors. I don't know of any, though.

Q. Well, would you look at the 1951 return, under depreciation schedule? A. Yes.

Q. Is there any error in that schedule insofar as a "cat" is concerned?

A. I—I don't know insofar as the "cat" is concerned if there is an error or not.

Q. This is a "cat" purchased for \$8,750?

A. Yes, that is correct.

Q. To be depreciated in five years?

A. Yes.

Q. How much is taken per year? [401]

A. In this year \$875.00 is taken but this schedule doesn't show what the prior year's depreciation was. \$875.00 may have been all that was left in 1951.

Q. Would you look at 1952 and see if the "cat" appears there? A. It does.

Q. And it is again \$875.00 for that year?

A. That is correct, and with this information I would assume that the depreciation in 1951 was not correct.

Q. Then, in 1952 in the computation of the tax itself—— A. Yes.

Q. ——there is an error there, too, is there not?

A. There is an error of about—yes, there is an error in the computation of tax, a very minor one.

Q. A minor one, but it is an error?

A. It is an error.

(Testimony of Paul Simonson.)

Q. These are all items that require adjusting?

A. Yes, they would.

Q. Have you compared those tax returns to the information of Mr. Bates which were identifications—or Exhibits 26 through 30, I think?

A. Yes, I have.

Q. Did you find any variation between the figures that Mr. Bates had and the figures that ended up on the tax returns?

A. As far as gross receipts, I found except in the year 1953 I guess, when there was a one cent error on the tax return [402] from the information that Mr. Bates had the gross receipts compared with what Mr. Bates' records showed, and while I think—I do recall that there were some variations but they were very minor in most cases on the expenses that showed on Mr. Bates' papers.

Mr. Moore: May I have 20 through 30, please?

Q. Incidentally, in the course of your investigation have you reached the point where you can recognize Mr. Palermo's handwriting?

A. I think I do, but I am no expert at handwriting.

Q. Handing you Plaintiff's Exhibit 28, first and second pages, does some of that appear to be Mr. Palermo's handwriting?

A. I don't know. I would myself think it is. I don't know.

Q. And, then, there is some other writing on there if it isn't his, is that correct?

A. That is correct.

(Testimony of Paul Simonson.)

Q. I want to point out the items of "Fines, 75.50" and "Tools" 200.00 which appear to be in Mr. Palermo's handwriting, don't they?

A. Yes.

Q. And would you look in the final return and advise how those items appear there?

A. It is described at "Tools, cables, etc., \$275.00" and the fifty cents doesn't appear here. [403]

Q. And on this work sheet next to the "Fines, \$75.50" some other writing other than Mr. Palermo's has appeared to the right of it; it appears to be "tools," is that correct?

A. Yes, that is correct.

Q. And so apparently the fines became tools in the preparation of the tax return?

A. It would appear that way, yes.

Q. Incidentally, did you make any records from Mr. Palermo's books of the expenses reflected in those books?

A. I don't recall. I do recall, not from his books but I do recall making record of his expenses from his checks. I don't recall anything—I probably did from 1947 but I don't recall any other years. I think we used checks in any other years.

Q. I see. You in the course of your investigation made trips to White Salmon and Bingen?

A. Yes, I did.

Q. And how many banks are there in Bingen?

A. I don't think that there are any banks in Bingen whatsoever.

Q. How many banks in White Salmon?

(Testimony of Paul Simonson.)

A. I believe there is only one so far as I know.

Q. And Bingen is a community of about 600 or 800 and White Salmon is a community of about twelve or fifteen hundred?

A. They are small communities. [404]

Q. Very small? A. Yes, very small.

Q. And very close together? A. Yes.

Q. And these mills with whom Mr. Palermo did business are located where?

A. They are mostly in the White Salmon and Bingen area.

Q. Very close?

A. Most of them I think are right there in Bingen.

Q. Do your summaries reflect the total amount of income received by Mr. Palermo for the individual years and the amount of that income which was deposited in the bank at White Salmon?

A. Yes.

Q. Do you have the summaries right there?

A. Yes, I have the summaries right here, yes.

Q. In 1950, how much was the gross income of Mr. Palermo?

A. The income we show here is \$82,964.64.

Q. And how much of that went into the bank?

A. We show that \$80,444.20 went into the bank.

Q. At White Salmon?

A. Yes, at White Salmon and the Bank of Stevenson.

Q. How much of that went to the Bank of Stevenson; that \$1,800.00 item or was it more than that?

(Testimony of Paul Simonson.)

A. No, it was quite a lot in 1950. The total deposits in the [405] Bank of Stevenson in 1950 of the income items was \$44,226.44.

Q. Well, then, in 1951, what was his gross income according to your summary?

A. \$120,129.70.

Q. And how much of that money was deposited in bank accounts? A. \$118,948.79.

Q. And was all of that at White Salmon or some at the Bank of Stevenson?

A. No, that was all at White Salmon.

Q. And in 1952, the same information?

A. The gross income in 1952 was \$127,410.77.

Q. And the deposited?

A. The deposited was \$125,724.32, and I think all of that except \$1,857.60 was deposited at White Salmon.

Q. Incidentally, where was that check from, that \$1,857.60?

A. The Highland Lumber Company.

Q. All right, in 1953, the gross and the amount deposited?

A. In 1953, the income was \$116,865.89 and \$111,886.16 was deposited.

Q. Now, these bank accounts, the one in White Salmon, in whose name was that bank account?

A. I think it was in the name of Joe and Bertha Palermo.

Q. And the bank account—the checking account at Stevenson, in whose name was that? [406]

A. I believe that was Joe and Bertha Palermo.

(Testimony of Paul Simonson.)

Q. And the savings account at Stevenson?

A. I think that was in Joe and Bertha Palermo, also.

Q. And this money that you reflected in the bank over the years that Mr. Bantz was examining you and the bank account building up, that was in Mr. Palermo's checking account at the White Salmon Branch of the National Bank of Commerce on the one hand and on the other at the Bank of Stevenson?

A. The money was in the checking accounts and savings account?

Q. In the ordinary checking accounts?

A. Yes, as far as I know.

Q. Now, in the course of your investigation did you check the net worth statements submitted by us to you with reference to the property set forth therein?

A. They were checked by Mr. Blankenship and [probably assisted him during the investigation.

Q. Have you created a net worth statement in reference to those facts? A. I have not.

Q. Mr. Blankenship has?

A. Yes, Mr. Blankenship has.

Q. And do those net worth statements correspond to the one which we submitted, with this \$10,-000.00 adjustment?

A. There are some variations but substantially I think they [407] correspond except for—

Q. As to the increase in the net worth?

A. Yes.

(Testimony of Paul Simonson.)

Q. In the course of your investigation, Mr. Simonson, was there ever any time when you made the request to me or to Mr. Brown or to Mr. Palermo for information which you did not receive?

A. Yes.

Q. What was that?

A. I requested an affidavit or requested a question and answer from or statement from Mr. Palermo.

Q. Pardon?

A. I requested an affidavit and question and answer statement from Mr. Palermo.

Q. When did you make that request?

A. I think I made that request September 28, 1954, and you said you would think about it at that time.

Q. You weren't demanding it at that time?

A. No, not at that time. I was asking if you would give a statement such as that.

Q. That was down at Goldendale?

A. Yes, at Goldendale and I requested that you think about it for a future time.

Q. And then you never did get it?

A. No, I did not. [408]

Q. Did you ever ask for it again?

A. I don't recall if I asked for it again, no, I don't

Mr. Moore: Could I have Exhibit 2, please?

The Witness: I have No. 2 here.

The Clerk: No, it is here.

Q. With reference to Exhibit 26 which is ap-

(Testimony of Paul Simonson.)

parently a page describing gross earnings and some expenses and some work sheets which were used by Mr. Bates in preparation of the return, did you ever check Exhibit against Exhibit 2?

A. I have checked those.

Q. Being the tax return for that year?

A. Yes.

Q. Did you interrogate Mr. Bates about it?

A. I did interrogate him about those, yes.

Q. I will point out to you on the first page, I think it is under gross earnings in what appears to be Mr. Palermo's handwriting a figure of \$40,231.64.

A. Yes.

Q. And on the back page in what I believe is Mr. Bates' handwriting it says gross receipts \$8,-670.37.

A. Yes.

Q. Did you ever ascertain where that figure came from?

A. I didn't talk to him about it. I don't recall it. That looks like the gross receipts for 1948 as I recall. I believe that the books would reflect gross receipts for [409] 1948, about that figure.

Q. About that figure?

A. Yes. It may a 1948 sheet, I don't remember.

Q. Rather than a 1949?

A. Yes.

Q. I see. With reference to the Exhibit 97 for Identification, would you state what that is in general?

A. This is an excerpt from my report of January 23, 1956. It is a portion of my report.

(Testimony of Paul Simonson.)

Q. It is a portion of your report to your superiors concerning your investigation of Mr. Palermo?

A. Correct.

Q. And this is all of that report which relates to the question of discovery of a savings account in the Bank of Stevenson, except for a couple of other paragraphs which don't go into how you did discover or whether there was any problem of discovery?

A. Well, that is all that I found in relation to that savings account in my report. I had some other items that related to the checking account just——

Q. It is not only on that all that you found but it is all that there is, is that right?

A. It is all that there is, as far as I know.

Q. Now, in this report that you submitted to your superiors make any reference to the request which I made to be [410] advised of what it was that was missing from the net worth statement?

A. I don't recall.

Mr. Bantz: Your Honor, I would object to any further questioning on that as being immaterial to the case here, what was in the report, as he states that he made a report concerning this particular item and there is nothing else. It isn't even in the direct examination what was in the report and not even here in the cross-examination.

The Court: It isn't material and shown to be inconsistent with his present testimony and it is only for impeachment. I will sustain the objection to anything other than impeachment.

(Testimony of Paul Simonson.)

Q. Your testimony today with reference to your discovery of the savings account has been put forth by you in the following manner, is this correct, that you did not know of the existence of a savings account at the Bank of Stevenson until March, 1955?

A. That is correct.

Q. Does that testimony include the fact that you did not know facts which would lead you to the discovery of that savings account prior thereto?

A. I don't understand what you mean by knowing facts which would lead me to that.

Q. Would you have found that Bank of Stevenson Savings account [411] if you had gone to the Stevenson Bank before March?

A. I would imagine that we would have.

Q. Would you have found that Bank of Stevenson savings account if you had gone to myself or Mr. Palermo or Mr. Brown, and let us make it myself because you finally did, and ask if there was a Bank of Stevenson savings account?

A. I don't know. I would assume that if I would have asked you you would have checked to see if there was a savings account in the Bank of Stevenson.

Q. Is it your testimony today that you had difficulty in ascertaining the existence of that savings account?

A. My testimony is——

Mr. Bantz: Your Honor, I am going to object to such an inquiry. It isn't part of the case I don't believe here now. He hasn't had any testimony to

(Testimony of Paul Simonson.)

that effect and he just stated the facts as they were developed.

The Court: I will sustain the objection. I think that the testimony is clear on that.

Mr. Moore: I think that is all.

The Court: Is that all the cross-examination?

Mr. Moore: Yes.

The Court: Do you have some redirect examination?

Mr. Bantz: Yes, I have some redirect but I think it would take more than five minutes and not more than fifteen. We could come back and start it at one-thirty. [412]

The Court: I will excuse the jury. The case will be suspended until one-thirty.

July 26, 1957, 1:30 P.M.

The Court: Proceed.

Redirect Examination

By Mr. Bantz:

Q. Mr. Simonson, referring to Plaintiff's Exhibit 88, which is a summary, I believe, of receipts—just a minute, now, may I have Exhibit 87?

A. 87, I have it.

Q. Do you have 87? A. Yes.

Q. Is that the summary for 1951? A. Yes.

Q. I believe you testified on cross-examination that one check had not been recorded in the books and records of Mr. Palermo. Now, will you look

(Testimony of Paul Simonson.)

under the list of recorded in book. You have that in front of you there, do you? A. Yes, I do.

Q. What is the amount under Stevenson Plywood that was received by Mr. Palermo for the year 1952? A. For 1951?

Q. Or 1951, pardon me.

A. From Stevenson Plywood the tabulation shows the total [413] amount received was \$3,987.62.

Q. And how much was recorded in the book?

A. \$332.22.

Q. And how much was not recorded in the book?

A. \$3,655.40.

Q. Now, referring to the Mt. Adams Loggers Association, what was the amount received by Mr. Palermo this year? A. \$5,771.73.

Q. And how much was recorded in the book?

A. \$789.74.

Mr. Moore: Your Honor, I believe this is merely a recap of what the plaintiff brought out on direct examination. I don't believe it is proper redirect examination.

Mr. Bantz: Your Honor, I don't believe I brought these exact figures clear across on it. I believe I used a general summary in 1951 and this morning the testimony was how many checks were not recorded and I was just showing that there was a partial amount for each year.

The Court: All right.

Mr. Bantz: I have only two more, your Honor.

The Court: All right.

Q. The Mt. Adams Loggers Association, how

(Testimony of Paul Simonson.)

much was received? A. \$5,771.73.

Q. And how much was recorded in the book?

A. \$789.74. [414]

Q. And how much was not recorded in the book?

A. \$4,981.99.

Q. Now, McCormick Lumber Company, how much was received for that year?

A. \$59,331.83.

Q. And how much was recorded in the book?

A. \$49,966.34.

Q. And how much was not recorded in the book?

A. \$9,365.49.

Q. Mr. C. O. Ackley, how much was received from him? A. \$50,592.67.

Q. And what was recorded in the book?

A. \$47,089.92.

Q. And what was not recorded in the book?

A. \$3,502.75.

Q. Will you refer to Plaintiff's Exhibit 66, which I believe you have there? A. Yes, sir.

Q. I believe you testified on cross-examination or on direct examination you received that in the month of December, 1954? A. Yes.

Q. At the time you received Plaintiff's Exhibit 66 did you have knowledge of the savings account in the Bank of Stevenson; yes, the Bank of the Town of Stevenson, Washington? [415]

A. No.

Q. Concerning Mr. Palermo?

A. No, I did not.

Q. And does the \$10,000.00 show, the savings

(Testimony of Paul Simonson.)

account of \$10,000.00, does it show on that exhibit?

A. No, it does not.

Q. Mr. Simonson, there was some discussion about expenses on Plaintiff's Exhibits 3, 4, 5 and 6 by Mr. Moore this morning, concerning expenses. Have you in any way brought out or been connected with expenses insofar as this case is concerned?

A. Not as far as the case is concerned here.

Q. What is the basis, then, of the indictment concerning the years of 1950 through 1953?

A. It is an understatement of gross receipts of Joe Palermo that is concerned here.

Q. I believe you testified on cross-examination that you had seen the gross receipts ledger, if that is the name, or sheets of Mr. Palermo for the years 1950 through 1953, that are in evidence, when you examined his books and records, is that correct?

A. That is a photostatic copy of his books, that portion.

Q. Did you see any other sheets showing a tabulation of the gross receipts of Mr. Palermo?

A. No. [416]

Q. You stated on cross-examination that there apparently was an error in Schedule "C" on the 1953 tax return. Does that error in any way have anything to do with the reflection on gross receipts listed on said income tax return?

A. No, it does not.

Q. Do any of the other errors that were discussed with you this morning by Mr. Moore have

(Testimony of Paul Simonson.)

anything to do with any of the gross receipts listed on the income tax returns for the years of 1950 through 1953, inclusive?

A. Not with the gross receipts, no, sir.

Q. Does an error as to the depreciation schedule of an income tax return have any reflection as to the gross receipts on that return?

A. Not with the gross receipts, no.

Q. Are we concerned in our allegations of the indictment with any of the depreciation schedules or Schedule "C's" of the income tax returns?

A. No, our figures reflect only the unrecorded gross receipts, and expenses claimed on the return are all allowed.

Q. Are all allowed? A. Yes.

Mr. Bantz: That is all I have.

Mr. Moore: No questions.

The Court: No recross-examination, Mr. Moore?

Mr. Moore: No, your Honor.

The Court: That is all, Mr. Simonson.

(Witness excused.)

Mr. Bantz: The plaintiff will rest, your Honor.

The Court: I will ask the jury to step out.

(Whereupon, the following proceedings occurred in the absence of the jury:)

MOTION FOR DIRECTED VERDICT OR JUDGMENT OF ACQUITTAL

Mr. Moore: If it please the Court, the defendant now moves that the Court direct a verdict or judgment of acquittal for the defendant as to all four counts of the indictment, based upon the following matters. In this case a plaintiff, of course, must prove the essential allegations of the indictment, being the willful attempt to evade taxes, and in order to do so they have, and we have not contested it, the proof of delinquency in reporting income and thereby a delinquency in taxes.

However, as the courts have ruled, in order to prove a case such as this, the plaintiff must prove by independent proof, other than the mere under-reporting or understatement of income——

The Court: And that can only be done by circumstances unless the defendant has confessed, and the circumstances here are that large amounts were involved and that in quite a number of instances receipts were not deposited in the bank or deposited in the bank and not recorded, and that would be [418] sufficient to take the case to the jury.

Mr. Moore: I would like to cite the case of Elwert vs. United States, 231 Federal 2nd, 928.

The Court: What Circuit Court is that?

Mr. Moore: Ninth Circuit, 231 Federal 2nd 928.

The Court: All right.

Mr. Moore: I would like to quote from that where the rule here as in other cases is: The trial judge must grant a motion for acquittal where

evidence of guilt is circumstantial only if as a matter of law reasonable minds as triers of the fact must be in agreement that reasonable hypothesis other than guilt can be drawn from the evidence.

(Whereupon, discussion of case law was had and the following ruling of the Court was had during discussion.)

The Court: If that is to be taken literally I don't see how the Goernment could ever make a prima facie case of tax fraud in prosecution unless they had a confession, unless by what the defendant did and what could be an effort to conceal his income and keep it from getting on the tax return.

Mr. Moore: Well, I think that the basis for that, I think, your Honor, is this: I feel that taking the plaintiff's case at its best the most that can be said is under-reporting for the years in question.

The Court: Coupled with consistent failure to put on his books large amounts which he has received from logging [419] companies. In some instances the whole amount that he has received from certain buyers is not put on his books at all. That is exactly what the man does if he wants not to show his income. He can show his books and the statement is correct. It seems to me that this statement without any confession is sufficient to take the case to the jury. It is for the jury to determine the force and effect of it and what inference to draw in the light of the explanations.

Mr. Moore: I realize that, your Honor.

The Court: I will read this case at the earliest opportunity and I would like to see that.

Mr. Moore: It does set forth that rule and I submit it on that basis.

(Whereupon, after further discussion of the law, the following proceedings occurred.)

The Court: Are you ready to proceed with your defense?

Mr. Moore: Yes.

The Court: All right, bring in the jury.

Mr. Bantz: I will assume, your Honor, that the motion was denied.

The Court: Yes, the motion is denied. I thought that might be inferred.

Mr. Bantz: Yes, it was.

The Court: Well, then, the record should show that.

(Whereupon, the following proceedings occurred in the presence of the jury.) [420]

The Court: All right, proceed.

Mr. Moore: Call Mr. Keith McCoy. Come forward, please.

KEITH McCOY

called and sworn as a witness on behalf of the defendant, was examined and testified as follows:

Direct Examination

By Mr. Moore:

Q. Would you state your name, please.

A. Keith McCoy.

(Testimony of Keith McCoy.)

Q. And where do you reside, Mr. McCoy?

A. In White Salmon, Washington.

Q. How long have you lived at White Salmon?

A. Most of forty years.

Q. And what is your occupation?

A. Insurance agent.

Q. How long have you been in that business?

A. Eleven and one-half years with my own agency, a total of fifteen and a half years, part of the total being as an employee of another agency.

Q. And are you acquainted with Joe Palermo?

A. Yes.

Q. How long have you know Mr. Palermo?

A. I believe fifteen years.

Q. Does he have business dealings with you?

A. Yes, sir. [421]

Q. And what are those?

A. Well, our business dealings have consisted primarily of policies which he has sought in connection with his lumber operation, fire insurance on various properties and life insurance.

Q. Has that been a substantial amount of business between the two of you?

A. It has been a very desirable account. It hasn't been a particularly substantial account in our agency in relation to that of some of the other lumber operators in the area.

Q. Now, does your acquaintance with Mr. Palermo extend to other than the insurance business that you have had with him? A. No, sir.

Q. During the period of time that you have

(Testimony of Keith McCoy.)

lived there have you become acquainted with the reputation of Mr. Palermo in the White Salmon-Bingen area for truth? A. Yes, sir.

Q. Do you know what that reputation is?

A. The reputation as far as I know has been nothing unfavorable, he and his family.

The Court: Well, that is good.

Mr. Moore: Yes, good.

Q. Do you know what his reputation has been for honesty? [422]

A. I have never heard anything adverse.

Mr. Bantz: Your Honor, I would like to have to answer yes or no and then he can answer good or bad because that is the proper way.

The Court: Yes.

Q. (By Mr. Moore): Answer yes or no whether you know his reputation for honesty?

A. Yes.

Q. And what is his reputation for honesty?

A. Favorable.

Q. Now, in your business dealings with Mr. Palermo, have you had occasion to discuss with him specific details of insurance policies or similar matters? A. Yes, sir.

Q. And along that line what has been your observation with reference to your explanation of details relating to insurance and insurance coverage and Mr. Palermo's evidence of understanding of those details?

Mr. Bantz: I would object, your Honor, to the answer to the question as being immaterial to the

(Testimony of Keith McCoy.)

case at issue; what he understands about insurance policies is not at issue here.

The Court: Well, I will overrule the objection.

A. I would say in answer to that, his grasp of the details of insurance by the nature of the contracts we have dealt [423] in has been not average or only average as evidenced by the fact that, oh, on more than one occasion that I can recall we have had some degree of misunderstanding as to the desirability of certain policies and have had to go over the case two or more times before we had a proper meeting of minds.

Q. You say go over the case——

The Court: I don't know whether you are trying to show that he is hard to sell or lacking in understanding.

Mr. Moore: I was going to go further into that.

Q. You said you had to go over something two or three times; you mean you had to go over it with Mr. Palermo two or three times?

A. Well, I can cite one instance.

Mr. Bantz: Your Honor, I would object to specific instances.

The Court: Yes, I don't think specific instances are proper, and the answer is not responsive.

(Question read.)

A. Yes, I did.

Q. Now, are you acquainted with the reputation of Mr. Palermo in the White Salmon area insofar

(Testimony of Keith McCoy.)

as his living or spending of money is concerned on his personal living?

Mr. Bantz: I object to that, your Honor.

The Court: I will sustain the objection to that. The [424] reputation testimony is limited to the traits involved in the charge.

Q. Are you acquainted with Mr. Palermo's home itself, the actual home in which he lives?

A. Yes, sir.

Q. And what type of home is it; is it a large expensive home? A. It was quite modest.

Mr. Moore: That is all.

Cross-Examination

By Mr. Bantz:

Q. Mr. McCoy, what kind of car does Mr. Palermo drive?

A. I believe he is driving a Buick at the present time.

Q. Has he driven a Cadillac in the last three or four years?

A. At one time, I don't recall how recently.

Q. Well, it has been in your memory anyway, hasn't it? A. Yes, sir.

Q. Did you insure the car?

A. No, sir, I have never handled the casualty line for him.

Q. Well, you state, don't you, that Mr. Palermo is of average intelligence insofar as the settlement of insurance business with you is concerned, is that right? A. No, that isn't.

(Testimony of Keith McCoy.)

Q. Isn't that what you said?

A. No, sir, I believe I said that his understanding of the contracts we discussed was average or below average. [425]

Q. What constitutes understanding of an insurance contract to you?

A. An understanding of the specific coverage which is being provided and the degree to which it may solve a particular problem within his personal or business life or in the line of coverage of property.

Q. Now, you had apparently some dispute with him as to some claims or something, is that correct?

A. No, sir, no dispute.

Q. Your dispute then was as to whether he was insured for a certain type of matter or whether he was not insured for it, is that right?

A. No, sir, there was no dispute whatsoever.

Q. Well, I thought you said you had some problem telling him what he was insured for, is that what you are talking about?

A. Well, if I may clarify that? You said I couldn't mention specific instances.

Q. No, I don't want you to. But have you had some problems as to his insurance coverage?

A. At renewal points on at least two types of coverage we have had to back up and go into coverage detail and repetition of the original understanding before he was willing to recognize that that which he was buying was right for his situation and before he choose to pay the [426] premium.

(Testimony of Keith McCoy.)

Q. All right, Mr. McCoy, the truth of the matter is that that happens every day that you are in the insurance business, is that correct; I mean that same instance happens every day when every guy comes in to you at renewal time, is that the fact?

A. No, sir, that is not the case.

Q. You don't have occasion on a change of policy or renewal to tell them what it is and go over the coverage and that type of thing when they come to renew a policy of insurance?

A. In a very small number of cases in our clientele.

Q. Now, you are talking about the reputation of Mr. Palermo being good in your area. Mr. McCoy, is his reputation a subject of conversation around your area? A. Yes, sir.

Q. Do you mean they talk about his reputation down there, do they?

A. Yes, sir. In a town the size of ours it is bound to be a point of conversation, when there is a situation such as this.

Q. Do they talk about your reputation, do you know?

A. I presume that they do occasionally. Very few people are immune in a town the size and type of ours.

Q. Now, you stated, I believe, that his honesty was favorable in your area. When you make that statement, is that a [427] discussion that you have had with some individual about his honesty or is

(Testimony of Keith McCoy.)

that what you consider every one thinks down there?

A. That is my personal opinion.

Q. In other words, your personal opinion is that he is honest?

A. Over all the dealings that I have ever had with him he was and also from the standpoint of a majority of expressions of opinion that I have heard, for what that may be worth.

Q. What you gave, though, was your personal opinion and not as reputation?

A. Well, reputation as I amended this last statement is not only one's personal opinion but is a composite of what one hears plus or minus for the person who is under discussion.

Q. Did you know that during the years—when you made up your mind about his honesty, did you know that during the years 1950, 1951, 2 and 3, that he had under-stated his gross receipts for his income on his income tax returns for those specific years?

A. No, sir.

Q. You had some dealings, Mr. McCoy, with Mr. Palermo on some financial statements concerning bonds, is that right?

A. That's right.

Q. He knows a dollar when he sees it, is that right? [428]

A. Yes, sir, that's right.

Q. And he had sufficient money to obtain bonds through your agency, is that right?

A. Yes, sir.

Q. And you had no problems with him during

(Testimony of Keith McCoy.)

this time making out financial statements or obtaining bonds?

A. Yes, sir, the only problem being that occasionally as we do with many of our clients we had difficulty in getting an exact pin-pointing figure for financial statement purposes, but that is not uncommon.

Q. But you know from your records that either you or Mr. Legler checked the bank and found that he had, oh, in excess of \$50,000.00 in cash at one time when you made a bond request, is that right?

A. That is right, yes, sir.

Q. That is a considerable amount of money insofar as that type of logging operation is concerned around there, isn't it, for an individual to have?

A. I presume it is. I don't think we can generalize on that from the standpoint of a type of logging operation accurately.

Mr. Bantz: That is all.

Redirect Examination

By Mr. Moore:

Q. Mr. Bantz has asked you about these bond matters. In the [429] issuance of a bond, a timber cutting bond—is that what you call them?

A. Yes, sir.

Q. What are those for?

A. There are various types of bonds, all of which are reasonably difficult to obtain. The most

(Testimony of Keith McCoy.)

commonly issued bond is the performance bond whereby the individual bonded agrees to comply with the state or Federal logging operations relative to slash disposal burning and reseedling and so on and so forth. Another type relates almost specifically to re-seeding matters. It is a five year bond which is extremely difficult to obtain because bonding companies must ascertain as thoroughly as they can through their own company and their agent that the principal or the person bonded has every chance of being alive and solvent business-wise five years from the point at which the bond is issued. There is still another type just recently used and made effective on Federal timber sales, which is a cash guarantee bond, it is called a payment bond, there are various types.

Q. Now, when you receive contact from a logger seeking a timber bond what do you do?

Mr. Bantz: Your Honor, that is a matter I think for direct examination.

Mr. Moore: He brought it out on cross-examination, your [430] Honor.

The Court: Well, all right, if he brought it out on cross-examination, all right.

A. The first item is take a financial statement and you start the application from the standpoint of whether or not his financial statement will support the bond applied for. The second point is opinion of the agent and verification from the bonding company representing that the person is of

(Testimony of Keith McCoy.)

good personal and business reputation in the area and is logically a subject for a bond.

Q. On these bond matters that you have handled for Mr. Palermo you would submit a financial statement as well as your opinion?

A. Yes, sir.

Mr. Moore: I think that is all.

Mr. Bantz: You may be excused. Pardon me, your Honor.

The Court: All right, he may be excused.

WILLIAM ZUNKE

called as a witness on behalf of the defendant, having been previously sworn, was examined and testified as follows:

The Clerk: Now, Mr. Zunke, you have been sworn before and your name is William Zunke?

The Witness: Yes, sir.

Direct Examination

By Mr. Moore: [431]

Q. Mr. Zunke, I think when you testified before you testified that you had known Mr. Palermo for over thirty years, is that correct?

A. Since 1930.

Q. Since 1930? A. Yes.

Q. And in 1932 he married your daughter?

A. Yes, sir.

Q. And from then until '47 I believe you testi-

(Testimony of William Zunke.)

fied he worked for you with some periods when he was working elsewhere?

A. From November, 1934 until November, 1947.

Q. From '34 to '47? A. Yes.

Q. And during that period he was working for you for wages as a truck driver? A. Yes, sir.

Q. Now, in 1947 you sold to him two pieces of equipment to go into the logging business, is that correct? A. No, three.

Q. Three. Oh, a truck, trailer and jammer?

A. Yes, sir.

Q. And when you sold that to him did you receive any down payment? A. No, sir.

Q. And you had no agreement—written agreement for that sale? [432] A. No, sir.

Q. Did Mr. Palermo at that time own any stumpage to your knowledge?

A. I don't think so. I don't know.

Q. From '47 to '53, when was it that you lived at White Salmon?

A. I moved there in the summer of 1950. I was there for a period of—I wouldn't state the exact time that I left in the fall but I was there in fall of 1950 and in the fall I went back home to Carnation.

Q. And then you weren't back at White Salmon until when? A. Until 1954.

Q. Until 1954? A. Yes.

Q. And when was it you went to Carnation, was it in '50? A. In '49.

Q. '49. Was there some period of time when

(Testimony of William Zunke.)

you were living at Carnation and working at White Salmon?

A. My home was in Carnation until the 6th of January, 1956, my home was in Carnation but I operated at White Salmon. I lived in a rented place at White Salmon.

Q. I am sorry, I can't hear you.

A. I say, I lived in a rented place at White Salmon until the 5th of January, 1956. I sold my place at Carnation.

Q. Now, how long was it after you sold these pieces of [433] equipment to Mr. Palermo that you received payment for them?

A. I am quite sure he paid me up sometime in 1948.

Q. 1948. The exact amount you do not recall now? A. I do not.

Q. And subsequent to that time after 1948 you on one occasion borrowed some money from Mr. Palermo and repaid it? A. On two occasions.

Q. On two occasions? A. Yes, sir.

Q. And did you also have other business dealings with him? A. No, not until '54.

Q. All right, in 1954 did you purchase something?

A. I bought some timber from him in 1954, some stumpage.

Q. Now, in all the time that you have known Mr. Palermo since 1930 and had business dealings with him, have you ever had any occasion arise in

(Testimony of William Zunke.)

which there was trouble between you and Mr. Palermo involving his honesty or truthfulness?

A. We never did.

Q. During the time that you have been in White Salmon have you had occasion to discuss with others Mr. Palermo's reputation for truthfulness and honesty?

A. Oh, I have heard lots of people——

Q. Discuss him? [434]

A. ——say that he was honest and that he always paid all of his bills and everything, and he always got along with everybody.

Mr. Bantz: Your Honor, I object to that answer, as it is not proper evidence of reputation.

The Court: Well, there was no objection made at the time. It was improper and the answer is not responsive.

Mr. Moore: Well, your Honor, I am sorry, I didn't know.

The Court: Well, you know how to establish character evidence, Mr. Moore, no doubt about that.

Q. Do you have knowledge of Mr. Palermo's reputation for truthfulness and honesty in the Bingen-White Salmon area? A. Yes.

Q. Do you know what that is?

A. Yes, I do.

Q. Will you state what that reputation is?

A. I don't know how to answer that.

The Court: Well, you know whether it is good or bad, don't you.

A. Well, it is good.

(Testimony of William Zunke.)

The Court: Well, that is the answer.

Mr. Moore: That is the answer. Could I have a moment, your Honor?

The Court: Yes, all right. [435]

Mr. Moore: I think that is all.

Cross-Examination

By Mr. Bantz:

Q. Mr. Zunke, you testified that the reputation for truthfulness and honesty of Mr. Palermo in the White Salmon area was good. Is his reputation for truthfulness and honesty a subject of conversation around White Salmon?

A. Yes, I have heard that.

Q. You have heard it discussed? A. Yes.

Q. You hear his reputation discussed?

A. Yes, sir.

Q. Are you giving your own personal answer to truthfulness and honesty or are you giving what other people have told?

A. I am giving mine.

Q. All right. Now, Mr. Zunke, in considering your answer for saying his reputation is good for truthfulness and honesty, did you know that during the years of 1950, 1, 2, and 3, that he understated his gross receipts on his income tax return for those specific years? A. I did not.

Q. Now, I want to ask you, your relationship I take it with Mr. Palermo is good?

A. That's right.

(Testimony of William Zunke.)

Q. How many children do you have Mr. Zunke?

A. Well, I have one.

Q. One? A. Yes.

Q. A daughter? A. Yes, sir.

Q. And your daughter is married to Mr. Palermo? A. Yes, sir.

Q. And you get along all right with your daughter? A. Yes.

Q. You have some grandchildren?

A. Yes, sir.

Q. And Mr. Palermo is married to your daughter and has been for twenty-five years or so?

A. Yes, sir.

Q. And as a son-in-law you and Mr. Palermo get along real well, is that right? A. Yes, sir.

Mr. Bantz: I have no further questions.

Mr. Moore: That is all.

The Court: That will be all.

BERTHA PALERMO

called and sworn as a witness on behalf of the defendant, was examined and testified as follows: [437]

Direct Examination

By Mr. Moore:

Q. Will you state your name.

A. Bertha Palermo.

Q. And you are the wife of Joe Palermo?

A. Yes, I am.

Q. When and where were you and Mr. Palermo married?

(Testimony of Bertha Palermo.)

A. We were married in Okanogan, Okanogan County, in June 25, 1932.

Q. Where had you grown up?

A. I have grown up at Olympia, Washington.

Q. And I believe that is where you first became acquainted with Mr. Palermo? A. Yes, it is.

Q. Now, when you married Mr. Palermo what was he doing for a living?

A. Well, when I and Mr. Palermo was married he wasn't employed right at the time. He had been working in the sawmill previous to that, but right at that time he wasn't working.

Q. And where did he work after that?

A. Well, after we were married a few months we went over to Okanogan County and he went to work for my father, Mr. Zunke.

Q. And then he worked for him for awhile and then discontinued working and then came back to work for him, is that [438] correct?

A. Well, we went there after we had been married, as I said, for a few months and then in the next summer then he left and went back to Olympia.

Q. And what type of work did he do there?

A. He went back to the sawmill.

Q. And then how long did he work at that?

A. He worked in the sawmill until I believe April, 1934, April or May.

Q. And then it was in 1934 that he went back to work for Mr. Zunke? A. Yes.

Q. And worked for Mr. Zunke at various locations around the state until 1947?

(Testimony of Bertha Palermo.)

A. That's right.

Q. And that employment was what, doing what kind of work?

A. Well, he went to work for my father at first cutting logs out in the woods, falling and bucking.

Q. And, then, what?

A. And then after that he drove a logging truck for him.

Q. Now, how many children did you and Mr. Palermo have? A. Two.

Q. What are their names?

A. Our son's name is Fritz Palermo and our daughter's name is Margie. [439]

Q. How old is Fritz?

A. Well, he will be twenty-four the next month, the 5th.

Q. And where is he?

A. He is at White Salmon.

Q. Is he in the logging business?

A. No, not any more.

Q. What does he do?

A. He is working for the Fish and Wildlife Service.

Q. The United States Fish and Wildlife Service? A. Yes.

Q. And your daughter is how old?

A. Twenty-one.

Q. And where does she live?

A. Well, she is at home at the present time.

Q. Now, in 1947 when Mr. Palermo went into

(Testimony of Bertha Palermo.)

the logging business what had he been doing immediately before that? A. Driving truck.

Q. For Mr. Zunke? A. Yes.

Q. In the White Salmon area? A. Yes.

Q. And from that time on, from 1947 up until the present date, was Mr. Palermo in business for himself? A. That's right.

Q. Now, do you know—and you can answer this question yes [440] or no—do you know whether or not when Mr. Palermo started business whether he had the assistance of an accountant or bookkeeper in keeping his books; do you know whether he did or did not? A. No.

Q. You do not know?

A. No, I don't know.

Q. Do you know how far Mr. Palermo went to school? A. Yes.

Q. How far?

A. Well, he went through the first eleven years.

Q. Finished the three years of high school, the third year in high school? A. Yes.

Q. During the period of time from 1947 through 1953, did you have anything to do with the keeping of the records from the logging operations of Mr. Palermo? A. No, I did not.

Q. You did handle some of the money, however?

A. Yes, I did.

Q. Who kept the books on the income and expenses of the logging operations?

A. Mr. Palermo did.

(Testimony of Bertha Palermo.)

Q. And where did he keep them, where did he do this?

A. Well, he generally did it at home in his little room that [441] we had for him where he has his desk.

Q. He had a room with a desk in it for keeping papers? A. Yes.

Q. With reference to the income that was received during the period after he started in logging, did you on some occasions receive checks which were for payment for logging done by Mr. Palermo, did you personally receive those in the mail or otherwise?

A. Well, they came through the mail, yes.

Q. And what did you do with them as you got them?

A. Well, I generally—we have one place in the house where we put all the mail that comes for Mr. Palermo and I put it right on this little shelf unopened.

Q. Now, during the logging season when he first started logging in 1947 until the end of 1953 when logging season was going on, what time did Mr. Palermo generally get up in the morning to start his day's work?

A. Well, we would generally get up around five or five-thirty in the morning, and so if we got up at five he would leave around five-thirty to start his day's work.

Q. And what time did he get home at night?

(Testimony of Bertha Palermo.)

A. Well, sometimes it would be six, seven, eight or nine o'clock before he would get home.

Q. And how many days a week did he generally work?

A. Six days a week and once in awhile on Sundays. [442]

Q. Do you know when he made entries in his books during those periods?

A. Well, generally it would be in the evenings after he came home from working all day.

Q. Now, concerning the handling of checks that were received for logging, was there any particular method of operation that was followed by Mr. Palermo or by you and Mr. Palermo for the deposit of checks in the bank account?

A. Oh, generally when the checks came in through the mail or the checks were received as I stated before they would be placed on this one shelf, and then Mr. Palermo would pick them up and take them to his desk.

Q. And did you make deposits on occasions?

A. Yes, I did.

Q. Was there a definite day of the week or something like that, that you were supposed to take the checks up and deposit them in the bank account?

A. No, there wasn't.

Q. What would be the practice for your taking the checks up and depositing them?

A. Well, when Mr. Palermo would leave so early in the morning and go to work he wouldn't have time to come in and put them in the bank and he

(Testimony of Bertha Palermo.)

would be in late at the bank and he would always ask me to make deposits for him that he couldn't make. [443].

Q. And so you handled the making of the deposits of checks on a number of occasions?

A. Yes, I did.

Q. Now, did you also cash checks for Mr. Palermo? A. Whenever he instructed me to do so.

Q. Now, when I spoke of cashing checks, I mean did you receive checks which were made payable to Mr. Palermo for logging from someone else to take them to the bank and get cash; in other words, cash them at the bank or some place else?

A. I would if he would tell me to do so.

Q. Did you also make purchasing trips for Mr. Palermo during this period? A. Yes, I did.

Q. And where did you make those trips?

A. Well, some days I would have to go to Vancouver, Washington, or I would have to go to Portland, Oregon, to different parts houses.

Q. And on occasion did you take cash for those trips? A. Yes, I did.

Q. And what was the reason for taking cash instead of writing checks from whomever you would take parts from the parts houses?

A. Well, some of these parts houses wouldn't accept a check.

Q. And you took the checks at Mr. Palermo's direction to [444] go and obtain certain specific items? A. Yes.

Q. And you took the cash by cashing the checks at Mr. Palermo's specific direction?

(Testimony of Bertha Palermo.)

A. Yes, I did.

Q. Now, you presently live in a home at White Salmon? A. Yes, we do.

Q. How long have you lived in that particular home?

A. We have been living in that home seven years.

Q. Purchased in 1951?

A. Somewhere along there.

Q. How large a home is it?

A. Well, it is not an overly large home, it is just a comfortable home.

Q. What construction is it; frame?

A. Frame.

Q. Do you know how much the purchase price of the home was? If you don't know just say so.

A. Oh, I just don't remember.

Q. And you and your daughter and husband live there together? A. Yes, we do.

Q. How many rooms are in the home?

A. About six rooms.

Q. During the period of 1947 up to the end of 1956 was there any change in the amount of time spent in logging by [445] Mr. Palermo?

A. No, there wasn't. He still worked those long hours.

Q. During the year 1954 you and Mr. Palermo acquired an interest in a hotel, did you not?

A. Yes, we did.

Q. And that was located where?

A. In Hood River, Oregon.

Q. And that hotel was disposed of when?

A. May 1st of this year.

(Testimony of Bertha Palermo.)

Q. And it had been on the market how long?

A. Well, it had been on the market for almost two years.

Q. And who operated that hotel?

A. I did.

Q. Now, during the period of time from 1947 to the end of 1953, did you and Mr. Palermo take any vacations together?

A. No, we didn't, not to speak of.

Q. Did you make any trips anywhere?

A. Oh, we maybe made an overnight trip up to Olympia to see his folks but we would be just overnight or for two or three days at the most.

Q. Somewhere during that period of time Mr. Palermo did go to a convention of some sort or to two conventions? A. Yes.

Q. How many did he go to from the fall of 1947 until 1953?

A. Well, he would go to one a year. [446]

Q. Here in the state? A. Yes.

Q. But other than that he took no vacations at all? A. No, he didn't.

Q. Mr. Palermo is he a member of any fraternal organizations? A. Yes, he is.

Q. What does he belong to?

A. He belongs to the Eagles and the Elks.

Q. How long has he belonged to the Eagles?

A. Well, I would say ever since about 1943 or 1944.

Q. And does he hold any office in the Eagles?

A. Yes, he held several offices in the Eagles.

(Testimony of Bertha Palermo.)

Q. What is he now?

A. He is the Past President.

Q. And any other office now, other than being Past President?

A. Well, he has been trustee for the last three years.

Q. He has been trustee?

A. Yes, and Chairman of the Board of Trustees up until this last year, up until the last three months.

Q. Has his membership in the Eagles involved the spending of any time by him with that organization?

A. Yes, it has.

Q. Doing what?

A. Well, being Chairman of the Board of Trustees, they would have their trustee meetings on every Wednesday Night and [447] he would always have to be there to preside over the meetings, and then he had other things to do as far as seeing that the clubroom was run properly and everything was going smoothly. That was left up to him an awful lot.

Q. Do you know Mr. Palermo's parents?

A. Yes, I do.

Q. And where do they live?

A. They live in Olympia, Washington.

Q. Do you know the parents of Mr. Palermo have received income for their living expense in the last few years?

A. Well——

Mr. Bantz: I would object, your Honor, as being immaterial in this case.

(Testimony of Bertha Palermo.)

The Court: I think it is immaterial.

Mr. Moore: During the period of 1947—part of 1947 to the end of 1953.

The Court: I will sustain the objection. There is no contest as to the expenditures I understand. It is merely a matter of income.

Mr. Moore: I think that is all for the moment. Do you want to take a recess now?

The Court: All right, the court will take a ten minute recess.

(Whereupon, after the afternoon recess, the following proceedings occurred:) [448]

The Court: All right, proceed.

Mr. Bantz: I may examine?

Mr. Moore: Yes.

Cross-Examination

By Mr. Bantz:

Q. Mrs. Palermo, I assume that you stated that when you got mail that it was placed in a certain spot in your house and was left unopened for your husband, is that correct? A. That's right.

Q. And then your husband came home and then he got the mail and opened it himself?

A. Yes.

Q. He had a little room where he kept his books and records, is that right? A. Yes, he did.

Q. He took his mail in and opened up his mail and took care of it in that particular room, did he, is that correct? A. Yes.

(Testimony of Bertha Palermo.)

Q. Now, Mrs. Palermo, I take it then that your husband handled the checks before he gave them to you to cash? A. Yes, he did.

Q. He knew then, in other words that if he received a check from John Jones, he saw that before he told you to go and cash it? I am using "John Jones as a fictitious name.

A. Yes, he did. [449]

Q. You had nothing to do with the bookkeeping of the concern that your husband was in business for himself with, I take it? A. No, I didn't.

Q. Your husband kept his own books and records? A. Yes.

Q. He received all of the checks himself by your leaving them in a certain place in the house, is that right? A. Yes.

Q. Now, when you cashed checks did he tell you which ones to cash? A. Yes, he did.

Q. And he gave you the checks? A. Yes.

Q. And you cashed them? A. Yes. Yes.

Q. When he sent you to Portland did he give you the cash to go down and pay the distributor down there for parts for the trucks or whatever you were buying?

A. He generally gave me the checks and told me to get them cashed.

Q. All right. But he knew when you were going down to Portland to get parts and things like that?

A. Yes.

(Testimony of Bertha Palermo.)

Q. And he knew how much money you had? [450] A. Yes, he did.

Q. And he knew what you were going to spend it for? A. Yes.

Q. I presume you brought all the receipts home and put them up in the place you kept the bills?

A. Yes.

Q. And he kept track of all of the bills?

A. Yes.

Q. And now you state that he worked after hours and kept his books and records up. How many nights a week did he work on his books and records?

A. Well, it would average three or four nights a week.

Q. All right, that means three or four nights after he came home that he would balance up his books and see that they were in order, is that correct? A. Yes.

Q. He spent one night a week running the Eagles Lodge, is that right? A. Yes.

Q. Did he have any other business that he had to take care of at night other than the Eagles Lodge and Elks and taking care of his books and records?

A. No.

Q. I am assuming that you went out and went to a show once in a while and things like that, but I am assuming that [451] he had nothing special to do when he did that, is that right?

A. That's right.

(Testimony of Bertha Palermo.)

Q. Well, during the winter time did Mr. Palermo work at the logging right up to January?

A. Yes, generally they will work until January or the first part of the year.

Q. And then there is two or three months that they don't have anything to do? A. Yes.

Q. Did he work on his own equipment at that time? A. Yes.

Q. Did he work on his books and records during that time? A. Yes.

Q. Was it during that time that he wasn't busy that you went up to Mr. Bates and signed your income tax returns?

A. Well, not always because the returns weren't always ready at that time.

Q. Well, did you go up to Mr. Bates' office and sign the income tax returns that had been prepared by him for your husband?

A. Yes, with my husband I did.

Q. You would go with your husband?

A. Yes.

Q. And you would sign them together up there? [452] A. Yes.

Q. And did you then mail them down there?

A. Yes, or Mr. Bates sometimes mailed them, I am not sure on that.

Q. Yes, all right, but one of you mailed them into the Collector of Internal Revenue, is that correct? A. Yes.

Q. And you did that mailing at White Salmon or Bingen, Washington? A. Yes.

(Testimony of Bertha Palermo.)

Q. Now, you stated that you bought a hotel?

A. Yes.

Q. When was it that you bought that hotel?

A. In the fall of 1954.

Q. How much money did you pay for it?

A. I don't rightfully know.

Q. Did Mr. Palermo handle all the business transactions of that hotel?

A. Most of it, yes.

Q. You didn't handle the business transactions?

A. No.

Q. When you sold the hotel who handled the transactions?

A. Mr. Palermo handled them.

Q. And he wrote the checks in the payment of the hotel and handled that part of it? [453]

A. Yes.

Q. And did he handle the monthly business part of the hotel also?

A. Well, whenever he had time to be with me he did, otherwise I would have to take care of it.

Q. All right, you actually ran the hotel, didn't you? A. Yes.

Q. How big a hotel was that?

A. It was an eighty-three room hotel.

Q. Eighty-three rooms? A. Yes.

Q. If he was around he would take care of the business end of it at the end of each month at the hotel?

A. Yes, if he could make it he would.

Q. Otherwise you would do it? A. Yes.

(Testimony of Bertha Palermo.)

Q. Did you have a separate account out of which you handled that hotel out of? A. Yes.

Q. And he was familiar with the operation of it, such as income and expenses, as far as they were concerned, is that correct? A. Yes.

Q. You had nothing to do with the purchasing as far as the purchase price was concerned? [454]

A. No.

Q. He made all that arrangement?

A. Yes.

Q. He made all the arrangement for selling?

A. Yes.

Q. Now, you made the statement that you did not assist him in the bookkeeping of his logging operation; that is correct, is it?

A. That is correct.

Q. He was in charge of it solely himself?

A. Yes.

Q. How often did you make the deposits to the bank, Mrs. Palermo, do you have any idea?

A. No, I don't. I would make them whenever he would tell me to make them. Whenever he couldn't get to the bank I would make them.

Q. But he got to the bank quite often himself, didn't he?

A. Well, not too often really because he was working every day.

Q. And if he didn't get to the bank very often and you didn't get to the bank very often, who put the money in the bank?

A. Well, he—he would—as I said before, he

(Testimony of Bertha Palermo.)

would make out the deposits and I would take them to the bank.

Q. All right, he made out the deposits; is that right? [455] A. We both did.

Q. But he gave you the checks to write down on the deposit slips from whom he had got them, is that it? A. Yes.

Q. And sometimes you made out the deposit slips and you would take them to the bank?

A. Yes.

Q. But many times he wrote up the deposit slips himself, is that right?

A. Yes, many times he did.

Q. But you wouldn't handle any of the business concerning his logging operation without his permission, is that right? A. That's right.

Q. What kind of car do you drive now, Mrs. Palermo? A. A Buick.

Q. And what kind of car did you drive in 1950?

A. In 1950 we drove a '49 Chevrolet—no, I will take it all back—we drove an Oldsmobile.

Q. And what did you have in 1951?

A. Oldsmobile.

Q. And 1952? A. Oldsmobile.

Q. And what did you have in 1953?

A. Well, that year we did have a Cadillac. [456]

Q. You state that Mr. Palermo is a member of the Elks Club? A. Yes.

Q. Is he an active member in the operation of the club? A. No, he is not.

(Testimony of Bertha Palermo.)

Q. I take it, he is active in the Eagles?

A. Yes.

Q. Now, he has been the Past President of the Eagles?
A. Yes, he still is.

Q. Oh, he is still the Past President?

A. Yes, he still is the Past President.

The Court: Yes, he still would be the Past President. You don't get over that.

Q. Is he trustee of the Eagles at the present time?
A. Yes.

Q. Was he Chairman of the Board?

A. He has been.

Q. He has been? A. Yes.

Q. When he was Chairman of the Board did he have charge of the business operation of the Eagles Club?
A. Yes.

Q. And he handled the finances of the Eagles Club, did he?
A. Yes.

Q. How long did he have that job?

A. Oh, I would say around three years. [457]

Q. And when was that, do you remember?

A. Well, I can't remember just the year he started as Chairman of the Board but I would say around 1954.

Q. Was he President of the club during the years 1950 to 1953?
A. No, he wasn't.

Q. Was he active in 1950 to 1953?
A. Yes.

Q. As Past President?
A. Yes.

Q. He is still Past President?
A. Yes.

Q. Did you ever just go to the bank and take the checks there for the purpose of cashing them

(Testimony of Bertha Palermo.)

and keeping the cash in your pocket, I mean with your husband's instructions? A. No.

Q. When you cashed the checks you used them for some purpose? A. Yes, that's right.

Q. Like the purchasing trips to Portland or Vancouver? A. Yes.

Q. You didn't go just to cash checks and buy groceries and things like that with them?

A. No.

Q. I assume you live an average normal life at White Salmon as far as your expenses are concerned, is that right? [458] A. Yes, we do.

Mr. Bantz: I have nothing further.

Mr. Moore: I have nothing further.

The Court: I think that is all.

(Witness Excused.)

The Court: Now, Ladies and Gentlemen, this is early to quit today but the attorneys feel that they can use the time profitably in making preparation for closing the case next week, and have convinced me that it would save time in the long run if they would quit and come back and start Monday morning, and so I am going to excuse you now until Monday morning at ten o'clock. The court will adjourn.

Monday, July 29, 1957, 10:00 A.M.

The Court: Proceed.

Mr. Moore: Call Mr. Babb. Come forward, Mr. Babb.

The Clerk: Mr. Babb, are you Marion Babb?

The Witness: I am.

The Clerk: And you have already been sworn in this case?

The Witness: Yes, sir.

MARION BABB

called as a witness by defendant, having been previously sworn, was examined and testified as follows:

Direct Examination

By Mr. Moore:

Q. Your name is Marion Babb? A. Yes.

Q. And you are the Manager of the White Salmon Branch of the National Bank of Commerce?

A. That's right.

Q. And you testified here last week?

A. That's right.

Q. Mr. Babb, to review, how long have you known Joe Palermo?

A. I'd say that I have known him or known of him since late '51 or early 1952.

Q. And in your capacity as Manager of the bank you have known him personally, is that correct?

A. Yes.

Q. And the basis of your acquaintanceship

(Testimony of Marion Babb.)

with him has been strictly in relation to the bank business?

A. I would say primarily, yes.

Q. At the present time is there any business dealings between the bank and Mr. Palermo.

A. There is.

Q. And what is that?

A. Both in the way of deposit account and a loan.

Q. I am sorry, you will have to speak up.

A. Both in the way of a deposit account and a loan.

Q. There is an outstanding loan from the bank to Mr. Palermo? [460] A. Yes.

Q. When was that loan made?

A. It was in the latter part of '56 or the first of this year. I think the latter part of '56.

Q. And that was in relation to what; loan for his logging business? A. Yes.

Q. Now, Mr. Babb, you stated I believe last week how long you had lived at White Salmon. Will you repeat that?

A. Since September, 1951. I went to White Salmon in September, 1951.

Q. Are you acquainted with the reputation of Joe Palermo in the White Salmon-Bingen area for truthfulness? A. Yes.

Q. What is that reputation for truthfulness?

A. He has always been considered truthful in my opinion.

Q. I can't hear you, Mr. Babb?

(Testimony of Marion Babb.)

A. He has a reputation for truthfulness.

Q. Are you acquainted with his reputation in the White Salmon-Bingen area for honesty?

A. Yes.

Q. And what is that reputation?

A. He has a reputation for honesty.

Q. And are you acquainted with his reputation in the White Salmon-Bingen area as a law-abiding member of the community? [461]

A. Yes.

Mr. Bantz: I don't believe that that is material in the case.

The Court: The objection overruled.

Q. You are acquainted with that? A. Yes.

Q. And what is that reputation?

A. He has a reputation of being a law-abiding citizen.

Mr. Moore: I believe that is all.

Cross-Examination

By Mr. Bantz:

Q. Mr. Babb, have you discussed with other people or with people in that area about his reputation?

A. It has been discussed, yes.

Q. In other words, his reputation has been a subject of conversation down in the White Salmon area, is that right?

A. I would say that is generally true of anyone in a small community, yes.

Q. And how about his; has his been a subject of conversation?

A. Yes, his has been discussed.

(Testimony of Marion Babb.)

Q. Did you know that during the years '50, 1, 2 and '53 that he had understated his gross receipts on his income tax returns for those years?

A. I had no knowledge of it until subsequent years that there had been some question of it, yes. That is after '53. [462]

Q. Yes. The reputation you are talking about is for the years including '50 to '53, or from '53 on?

A. From the time I have known him.

Q. Which is about 1952?

A. Yes, early 1952.

Mr. Bantz: No further examination.

Redirect Examination

By Mr. Moore:

Q. Your reference to his reputation is as of 1952 or during the period from 1952 until the present date.

A. From 1952 to the present time.

Q. With reference to the question Mr. Bantz ask you concerning when you became aware of the fact that there had been an understatement of income by Mr. Palermo in his income tax returns for 1950 through 1953, when did you become aware of that fact?

A. Well, I had naturally knowledge that there was investigation being done by the Department of Internal revenue—well, I don't recall the year but it was in 1954 that I first knew of it.

Q. In 1954?

A. Yes. I believe it was 1954. I believe it was after 1953.

Mr. Moore: That is all.

Mr. Bantz: I have nothing further.

The Court: That is all. [463]

JOE CROWE

called and sworn as a witness on behalf of the defendant, was examined and testified as follows:

Direct Examination

By Mr. Moore:

Q. Your name is Joe Crowe?

A. Joe Crowe.

Q. And where do you live, Mr. Crowe?

A. White Salmon, Washington.

Q. How long have you lived there?

A. I moved there in '39.

Q. '39, and have lived there continuously?

A. Yes, sir.

Q. What is your occupation?

A. County Commissioner of Klickitat County.

Q. County Commissioner of Klickitat County?

A. Yes, sir.

Q. And how long have you known Joe Palermo?

A. Since 1936.

Q. Where did you know him before you were at White Salmon?

A. Cle Elum, Washington.

Q. Was that acquaintanceship with Mr. Palermo, has that been business or social, or both?

A. Both.

Q. And in what respects has it been business? [464]

(Testimony of Joe Crowe.)

A. We have had business dealings with lodges—directors of lodges there at White Salmon and at Cle Elum. We logged together some and our acquaintanceship was in logging and skidding.

Q. You were formerly a logger?

A. Yes, sir.

Q. Do you have any business dealings with Mr. Palermo at the present time? A. None.

Q. Are you aware of Mr. Palermo's reputation in the White Salmon-Bingen area for truthfulness?

A. Yes.

Q. Would you state what that is?

A. Very truthful.

Q. Are you aware of Mr. Palermo's reputation in the White Salmon-Bingen area for honesty?

A. I am.

Q. And what is that? A. Very good.

Q. I can't hear you. A. Very good.

Q. And are you aware of Mr. Palermo's reputation in the White Salmon-Bingen area as a law-abiding member of the community?

A. I am. [465]

Q. And what is that reputation?

A. He is a law-abiding member of the community.

Q. With reference to Mr. Palermo's reputation for truthfulness, honesty, and as a law-abiding member of the community, how long has he had that reputation to your knowledge in the White Salmon—

A. Since my acquaintance with Palermo.

(Testimony of Joe Crowe.)

Q. Pardon me, let me finish my question—in the White Salmon-Bingen area?

A. He has always had that reputation.

Mr. Moore: That is all.

Cross-Examination

By Mr. Bantz:

Q. Mr. Crowe, his reputation has been good since the time that you have known him in that area you stated. Did you know during the years '51, '52—'50, 1, 2 and '53 that he had understated his receipts for his income tax returns during those years? A. During those years?

Q. Yes. A. No, I did not.

Q. When did you learn of that?

A. Well, the first evidence I had of it was when I learned of this trial here.

Q. Have you talked with people in that area about his [466] reputation?

A. I wouldn't say that I talked about his reputation, no. You always hear discussion of it all the time like in any small community.

Q. Well, his reputation is a subject of conversation in the White Salmon area?

A. No, not that I can say. There is no question of his reputation being good.

Q. Are you giving me your personal opinion of the reputation of Mr. Palermo?

A. I would say that I am giving the opinion of the community as I found it from associating with him and his associates.

Mr. Bantz: I have no further questions.

Mr. Moore: That is all.

The Court: That will be all, Mr. Crowe.

Mr. Moore: Mr. Sprague.

The Clerk: Mr. Sprague, you are Theodore Sprague?

The Witness: Yes, sir.

The Clerk: And you were sworn?

The Witness: Yes.

THEODORE SPRAGUE

called as a witness by the defendant, having been previously sworn, was examined and testified as follows:

Direct Examination

By Mr. Moore:

Q. Your name is Theodore Sprague?

A. Yes.

Q. And you are generally known as "Jolly" Sprague, is that right? A. Yes, right.

Q. Mr. Sprague, you testified the other day that you live in the White Salmon area?

A. Yes, right.

Q. How long have you lived there?

A. Since 1945.

Q. And have you been in the logging business there since that time?

A. Logging and sawmill business.

Q. And you are acquainted with Mr. Palermo?

A. Yes.

Q. Has that acquaintanceship been anything

(Testimony of Theodore Sprague.)

other than a business acquaintanceship to which you testified last week?

A. Well, when you are doing business with a man you always have some social acquaintanceship with him. Am I answering your question?

Q. Your acquaintanceship with Mr. Palermo includes social? A. Yes.

Q. Are you presently doing business with Mr. Palermo? A. Yes, I am. [468]

Q. And does that involve his selling logs to you at your sawmill? A. Right.

Q. Are you aware of Mr. Palermo's reputation in the White Salmon-Bingen area for truthfulness?

A. I am.

Q. Would you state what that is?

A. It is very good as far as I am concerned.

Q. Are you aware of his reputation in the White Salmon-Bingen area for honesty? A. I am.

Q. And what is that? A. It is very good.

Q. Are you aware of his reputation in the White Salmon-Bingen area for being a law-abiding member of the community? A. I am.

Q. And what is that? A. It is very good.

Q. With reference to the question that I have asked you as to his present reputation, has his reputation for honesty and truthfulness and being a law-abiding member of the community changed in any way since you have become acquainted with him? A. No.

Mr. Bantz: Your answer? [469]

A. No.

(Testimony of Theodore Sprague.)

Mr. Moore: I believe that is all.

Cross-Examination

By Mr. Bantz:

Q. Mr. Sprague, did you know that during the years, 1950, 1, 2, and '53 that Mr. Palermo understated his gross receipts in his income tax returns for the specific years?

A. I did not know that at that time.

Q. Have you talked with people in the White Salmon area about his reputation?

A. Of what time?

Q. Recently. Is his reputation a subject of conversation in that area?

A. I would say recently, yes.

Q. Are you giving your personal opinion——

A. Definitely.

Q. ——as far as you are concerned?

A. Definitely.

Mr. Bantz: I have nothing further.

The Court: That is all then.

EDWARD PARKER REED

called and sworn as a witness on behalf of the defendant, was examined and testified as follows:

Direct Examination

By Mr. Moore:

Q. Would you state your name, please.

A. My full name is Edward Parker Reed. Edward P. Reed.

(Testimony of Edward Parker Reed.)

Q. Where do you live? A. White Salmon.

Q. How long have you lived at White Salmon?

A. Since late 1950.

Q. When?

A. I would say the fall of 1950.

Q. What is your profession?

A. I am an Attorney at Law.

Q. Do I understand that you have been practicing at White Salmon since the fall of 1950?

A. Yes, that is right.

Q. You are a duly licensed and practicing Attorney in the State of Washington?

A. I am. I paid my last annual fees.

Q. Are you acquainted with Joe Palermo?

A. Yes, I am.

Q. In what capacity has that acquaintanceship been?

A. I would say primarily in a business way. I have handled a good deal of his business such as it is from early 1951, and to some extent it has been social.

Q. And what has that professional relationship involved?

A. Primarily isolated real estate transactions and timber [471] purchases and a few sales. I would say general run of the mill work for a general practitioner.

Q. When you say real estate do you mean purchase of stumpage?

A. Yes, there have been timber deeds and timber contracts.

(Testimony of Edward Parker Reed.)

Q. Are you presently working on anything for Mr. Palermo?

A. Yes. I have at least two matters in the office now that I can think of.

Q. With reference to Mr. Palermo's business dealings with you and your social acquaintanceship with him, have you become aware of his reputation in the White Salmon-Bingen area for truthfulness?

A. I have.

Q. And what is that reputation?

A. I'd say the best.

Q. With reference to Mr. Palermo's—your acquaintanceship with Mr. Palermo and residing in that area, are you acquainted with his reputation for honesty?

A. Yes, I would say I was.

Q. And what is that?

A. I would say the best.

Q. With reference to his reputation in the White Salmon-Bingen area for being law-abiding member of the community, are you acquainted with that reputation? A. Yes.

Q. And what is it? [472]

A. I would say the best.

Q. Has that reputation been changed during the period of time that you have been acquainted with him? A. No, it has not.

Mr. Bantz: Is that all?

Mr. Moore: Yes, I believe that is all.

(Testimony of Edward Parker Reed.)

Cross-Examination

By Mr. Bantz:

Q. Are you the only Attorney in the White Salmon area?

A. No, I am not, Mr. Bantz, there is another.

Q. And who is he?

A. Grant P. Soley is his name. I am the senior of the two.

Q. You have been there how long, Mr. Reed?

A. I would say late in 1950. I graduated in June, 1950 and as soon as I got my admission notice from the Bar I went there.

Q. You have been there ever since?

A. Yes, I have.

Q. How recently have you discussed with people about Mr. Palermo's reputation in the area?

A. I would say quite recently. I would say it has always been continuous since it became a matter of public knowledge that there has been discussion about his affairs.

Q. Have you been talking with people about his reputation since the trial started in Yakima? [473]

A. Since the trial started?

Q. Yes.

A. No, I don't think so, Mr. Bantz. I was away. I was in Salt Lake City and I was at the beach, and I haven't.

Q. Mr. Palermo has been coming to you to handle his transactions in the real estate business and hotel business?

(Testimony of Edward Parker Reed.)

A. Yes, he has. To my knowledge anyway I have handled it all.

Q. And he has been just a regular client of yours that comes back in when he needs some legal work done, is that correct? A. That is true.

Q. You haven't been a business advisor to him, have you, at all?

A. Well, I don't think you can practice law without giving him business views in a legal sense but in the technical sense I haven't.

Q. You have just been doing his legal work, basically, I mean? A. Basically?

Q. He doesn't come to you and ask you if and how he can spend his own money? A. No.

Q. He handles his own affairs that way?

A. Well, let me put it this way since you have asked the question, Mr. Bantz. He has asked my opinion as to one or two deals and I have cautioned him against them and he [474] has gone ahead and done it and made more work for us.

Q. He has a mind of his own, is that right?

A. Oh, yes, he does.

Q. Mr. Reed, you apparently know the gentleman's reputation. Did you know during the years 1950, '51, '52 and '53 that Mr. Palermo had understated his gross receipts on his income tax returns for those specific years?

A. I have known that ever since when it became more or less a matter of common knowledge when the investigators were calling in town. I think Mr. Blankenship and others called and I think at that

(Testimony of Edward Parker Reed.)

time I knew that they were questioning Mr. Palermo, and up to that time I didn't know.

Q. You did not know what the charge was or anything? A. No, I did not know.

Q. I take it, though, as a Lawyer you have talked about his reputation with people in the community, in the area? A. I have.

Q. I take it his reputation is a subject of conversation in the area?

A. It is just as it is one of the things that the others said they found in a small community.

Q. What is that a good or evil thing, would you say?

A. It is very evil but you can adjust to it and in time you take it all right. It takes a while but you adjust to it, [475] you know that, as you well know, Mr. Bantz.

Mr. Bantz: I well know, I grew up in a small town. That is all.

Redirect Examination

By Mr. Moore:

Q. Did you have anything to do with Mr. Palermo's buying the hotel? A. Yes, I did.

Q. What did that involve?

A. It involved taking on a hotel and a large mortgage that was there and paying some cash and not very much and also transfer of three rental properties in White Salmon.

Q. Did your relationship with Mr. Palermo on

(Testimony of Edward Parker Reed.)

that transaction involve anything other than the closing of the deal after he had made it?

A. I went to Hood River as his agent and he had signed some kind of earnest money receipt and to get the cat out of the bag the deal wasn't set up right and I released that earnest money receipt and incidentally it was the Palmas the people that he bought it from and I had to draw some papers and we had to clear up the deal from then on.

Q. What I was trying to find out, had he discussed the purchase with you before making any committment? A. Yes, he did.

Q. And before he signed the earnest money?

A. Yes, he did and I indicated that I had considerable misgivings about it.

Mr. Moore: That is all.

Recross-Examination

By Mr. Bantz:

Q. Just one other question, Mr. Reed. You don't treat Mr. Palermo any different than any of the rest of the clients we deal with as lawyers or any other of the people we deal with?

A. I don't believe I do.

Q. It is strictly a lawyer-client relationship, I take it?

A. It is a small town lawyer-client relationship.

Mr. Bantz: That is all.

Mr. Moore: That is all.

(Witness Excused.)

Mr. Moore: Mr. Brown.

The Court: Is this another character witness?

Mr. Moore: No.

The Court: All right.

ALLEN BROWN

called and sworn as a witness on behalf of the defendant, was examined and testified as follows:

Direct Examination

By Mr. Moore:

Q. Will you state your name, please. [477]

A. Allen Brown.

Q. And where do you live, Mr. Brown?

A. Vancouver, Washington.

Q. And how long have you lived there?

A. Since 1937.

Q. And what is your profession?

A. I am a Certified Public Accountant.

Q. Licensed by the State of Washington?

A. Yes.

Q. How long have you been such?

A. Since 1948.

Q. And you practice there at Vancouver, Washington? A. Yes.

Q. And are a partner in the firm of Mickelwait and Brown, is that right. A. That's right.

Mr. Bantz: I would stipulate that Mr. Brown is a well-qualified C.P.A. and there is no question about his being an expert if they want to qualify him as such.

Mr. Moore: Thank you, Mr. Bantz.

(Testimony of Allen Brown.)

Q. When did you become acquainted with Mr. Palermo, Mr. Brown?

A. About the middle of October, 1954.

Q. And that was where?

A. At Vancouver, Washington. [478]

Q. Mr. Palermo came to your office?

A. Yes.

Q. And what was the purpose of his visit?

A. He had a list of items which had been written by Mr. Blankenship that Mr. Blankenship wanted provided in connection with the investigation which he had started as regards Mr. Palermo's tax returns. As I recall, that list included a net worth trace from 1949 to 1953 and by specific years if possible, he wanted a reconstruction of the profit and loss for those years if it could be done and other similar items. He also requested that if Mr. Palermo is to be represented by someone enrolled to practice before the Treasury Department that a power of attorney be submitted.

Q. And thereafter did you commence the preparation of those forms? A. Yes, I did.

Mr. Moore: May I have Exhibits 67 and 68 and 69?

Q. Handing you Exhibit 66, is that the net worth statement which you prepared?

A. Yes, this is the original net worth trace that we prepared.

Q. And you prepared that between sometime in the Month of October of 1954 and sometime in the Month of December, 1954?

(Testimony of Allen Brown.)

A. That is correct. [479]

Q. Now, when you prepared that net worth trace what did you use for the preparation?

A. Primarily questions directed to Mr. Palermo as regards what he had in the beginning and end of each of the years involved, and insofar as I could learn or in the period of time available information that we could dig out to support the cost of the various assets which he stated and any records of liabilities which existed at the end of each of those years, and insofar as possible the amount of money he had spent for personal living and other personal reasons.

Q. And on the basis of the preparation of that net worth trace is there any major change that would be necessary by reason of such work which you have done in relation to Mr. Palermo's business?

A. Yes, there would. During 1952 the bank account—the checking account at the Bank of Stevenson at Stevenson, Washington, was closed. We had shown on the net worth trace that there was on December 31, 1950, and December 31, 1951, a checking account at the Bank of Stevenson and during August of 1952, that account was closed and in reviewing with Mr. Palermo as I had been over several days over long periods of time and many hours a day, and in developing this net worth trace I asked questions similar to: Was that account transferred? And he [480] answered me in the affirmative that it had been transferred. On the White Salmon bank statements about the same time of the month or shortly

(Testimony of Allen Brown.)

thereafter were two deposits, large deposits in the neighborhood of \$4,000 and \$10,000.00, and I made an erroneous assumption that the bank account had been transferred to White Salmon. As a matter of fact, in recapping deposits in that year and totaling the deposits I eliminated the total of the money deposited from the monies of that year the Bank transfer of \$10,000.00 in order to arrive at the indicated gross receipts by a bank deposit method. So, at that time and subsequent to that time I was under the impression and erred in not questioning him further perhaps that the money there in the Bank of Stevenson had been transferred to the bank at White Salmon.

Q. Then, after discovering this error the net worth statement would have to be changed to include the savings account at the Bank of Stevenson?

A. Yes, it would.

Q. Are there any other major changes that would have to be made which had been brought to your attention by some other further work that you may have done?

A. Not that I recall.

Q. Now, with reference to Exhibit 67—oh, one more question before we leave Exhibit 66. Before you delivered Exhibit [481] 66 to me for delivery to Mr. Blankenship, did you go over that net worth trace with Mr. Palermo?

A. Yes.

Q. Now, Exhibit 67, when did you do the work that is shown on Exhibit 67, which is differences between reported and indicated net income of Mr. Palermo for the years 1951 through 1953?

(Testimony of Allen Brown.)

A. Sometime during the period of the middle of October to the middle of December, 1954.

Q. Now, are there any major changes that would have to be made in Exhibit 67 by reason of subsequent developments?

A. Yes, in the matter of gross receipts or total receipts on this particular schedule there would have to be changes in each of the years in the indicated gross receipts. For the year 1952 the gross receipts would have to be adjusted by virtue of my having reduced the receipts by this \$10,000.00 transfer over which I became confused. Also in each of those years there were some small checks which had not been deposited at the bank. At that time we were using a bank deposit method to determine gross receipts. Subsequently, Mr. Blankenship and Mr. Simonson brought to our attention some small checks, a list of small checks which we had not included in the method which we approached this during the first few weeks we were working [482] on it.

Q. And is that the only major change that would have to be made with reference to Exhibit 67, those two items?

A. As far as gross receipts are concerned, yes.

Q. And would I be correct in assuming that the recapitulation by Mr. Simonson of checks received by Mr. Palermo, checks in the book and checks deposited and checks not deposited, would reflect the items which were not discovered and which would have to be included in those years?

(Testimony of Allen Brown.)

A. That's right.

Q. Now, with reference to Exhibit 68, which is a Statement of Profit and Loss for three years, is it not, 1951, 1952 and 1953?

A. Yes, that is correct.

Q. Was that also prepared by you between October and December, 1954? A. Yes.

Q. And, again, were those preparations made from bank statements? A. Yes, they were.

Q. And would there be any major changes so far as Exhibit 68 is concerned in order to correctly reflect the statement of profit and loss during those years?

A. Yes, the same adjustments would be necessary as regards gross receipts as we just discussed in Exhibit 67. [483]

Q. Adjust for the \$10,000.00 and for the undeposited checks? A. That's right.

Q. Now, concerning Exhibit 69, what is that?

A. It is all the deposits—a list of deposits in the National Bank of Commerce of White Salmon for 1951, 1952 and 1953 as prepared by me in the course of this recap of receipts.

Q. That shows receipts deposited in the White Salmon Branch of the National Bank of Commerce?

A. That's right.

Q. And what did you use to make that up?

A. I used the bank statements themselves insofar as they were available, in Mr. Palermo's possession.

(Testimony of Allen Brown.)

Q. Oh, the ones—the statements that would go back to him with cancelled checks?

A. Yes, I think that is right. Oh, I think subsequently—I better correct that. I don't know whether it was subsequent to the preparation of these or during the preparation of these that we did go to the National Bank of Commerce at White Salmon to pick up the ledger sheets that may have been missing from his files at home.

Q. And so with reference to Exhibit 69 do you know whether there would have to be any major changes in Exhibit 69?

A. The only change would be to list—the deposits listed for the year 1952, you would have to adjust the bank [484] transfer of \$10,125.78 to arrive at the indicated receipts of income for the year.

Mr. Moore: Your Honor, would it be permissible to take a recess at this time so that I could get some exhibits?

The Court: Yes, we will recess. The court will recess at this time subject to call.

(Whereupon, after recess the following proceedings occurred:)

Mr. Moore: Would you mark those, please.

The Clerk: I will mark Defendant's 98, 99, 100, and 101.

The Court: All right. Those are all in evidence, aren't they.

The Clerk: No, I say I am marking them.

The Court: Oh, yes, I see.

(Testimony of Allen Brown.)

Q. (By Mr. Moore): Handing you Plaintiff's Exhibits 16, 17, 18, 19, and 19-A, in the course of your working on Mr. Palermo's tax deficiency computation have you seen duplicates of those items?

A. I have seen duplicates of some of these items.

Q. And where did you obtain those?

A. From Mr. Palermo's files.

Q. And in going over the duplicates were you able to ascertain from those duplicates the names of the mills to whom Mr. Palermo had sold logs during the years [485] 1950 through 1953?

A. Yes. Generally speaking, there were some—some deposits slips merely had a bank number.

Q. Now, with reference to Exhibits 86, 87, 88 and 89, which are the summaries prepared by Mr. Simonson for the years 1950 through 1953, you have examined those, have you not?

A. Yes, I have.

Q. And with reference to the checks that are referred to therein, and whether they were recorded or not recorded in Mr. Palermo's book about which Mr. Simonson testified were deposited or not deposited in the bank, are those summaries generally correct so far as you are concerned?

A. Yes, they are.

Q. Handing you Defendant's Exhibits 98, 99, and 100 for Identification, do you know what those are?

A. Yes, these are the record books as kept by Mr. Palermo in connection with his logging operation at White Salmon.

(Testimony of Allen Brown.)

Q. Which he delivered to you? A. Yes.

Mr. Bantz: Which number is that?

Mr. Moore: I will bring that out now.

Q. 98 is for what year? A. 1950.

Q. And what is contained in that book in general?

A. There is—in general it contains gross earnings, [486] stumpage payments or obligations for stumpage earnings records of the employees of Mr. Palermo and a few notations as to payments paid, payments made to others, there are very few of those notations.

Q. What year is Exhibit 99 for Identification?

A. For the year 1951.

Q. And does that contain approximately what 98 did?

A. Yes. Substantially the same information as contained in the book for 1950.

Q. And with reference to Defendant's 100 for Identification, would you state what that is, what year?

A. This book contains similar information to that of the other two for the years 1949, 1952 and 1953.

The Court: Is that 100?

Mr. Moore: This is one hundred even.

Q. Do you know whether those books were ever presented to Mr. Simonson and Mr. Blankenship for their viewing?

A. To the best of my knowledge, they were.

(Testimony of Allen Brown.)

Q. Handing you Defendant's Exhibit for Identification 101, would you state in general what that is?

A. This is a recap of statistice in connection with gross income of Mr. Palermo for 1950, 1951, 1952, and 1953, which I prepared to compare the corrected gross income as I determined them as was determined by Mr. Simonson.

Q. And that was prepared at my request? [487]

A. That's right.

Q. And in preparing that identification did you use the information that is presently in evidence?

A. Yes, I did.

Q. One question while we are waiting: With reference to Exhibits for Identification 98, 99 and 100, have those books been changed any since they were delivered to you by Mr. Palermo?

A. Only insofar as I have made some little tick or check marks as I was making up the various summaries and recaps.

Q. Any little check marks are yours, is that it?

A. Yes.

Mr. Moore: We offer 101, your Honor.

Mr. Bantz: I have no objection to 101. You did not offer 98?

Mr. Moore: No.

The Court: 101 will be admitted.

(Whereupon, said document "Gross Income Statistics" was admitted in evidence as Defendant's Exhibit No. 101.)

(Testimony of Allen Brown.)

Q. Handing you Defendant's Exhibit 101, will you state specifically what is shown on this exhibit?

A. The corrected—for the year 1950 corrected gross income [488] as determined by me and as determined in the indictment or by Mr. Simonson, the gross income reported as contained on the tax returns which are admitted here, the gross income deposited as determined by me and as shown on Mr. Simonson's summaries, and the same information—oh, excuse me.

Q. Now, would you read the information for the year 1950?

A. As I determined the income, the corrected gross income for 1950, \$89,221.35, per the indictment \$82,964.64, using those as 100 per cent of gross income; the gross income reported as determined by me or as indicated on the tax returns, \$66,090.94, and the same figure in Mr. Simonson's summary. The percentage that the reported income is of the corrected gross income, my determination is 74.1 and Mr. Simonson's determination is 79.7 per cent. In other words, that is the amount of indicated gross income which was reported.

Q. In other words, on your computation Mr. Palermo reported for 1950, 74 per cent of his gross income?

A. That's right.

Q. And under Mr. Simonson's he reported 79.7 per cent?

A. That's right. Now, the gross income which was deposited, according to my determination was

(Testimony of Allen Brown.)

97.2 per cent and according to Mr. Simonson was 97.0 per cent.

Q. Now, that would include deposits in both the bank of [489] Stevenson and the bank at White Salmon, is that correct? A. That is right.

Q. Now, what is the reason of this discrepancy between your figure and Mr. Simonson's?

A. In Mr. Simonson's summaries in evidence here he has eliminated items which he could not identify as income to his satisfaction.

Q. With reference to the year 1950, would you indicate what that would be?

A. The total amount you wish?

Q. Yes.

A. \$6,256.71, they have eliminated as non-income or unidentified.

Q. Now, with reference to the year 1951, would you recite your computations as you did for 1950?

A. In 1951 the corrected gross income by my calculations is \$120,179.70. By Mr. Simonson's, \$120,129.76. The gross income reported by my calculation and by Mr. Simonson's, \$98,178.22, and in both cases the percentage reported of the corrected gross is 81.7 per cent. The gross income deposited by my calculations is \$118,998.79, and by Mr. Simonson, \$118,948.79, and 99.0 per cent of the corrected gross income was deposited in the bank or banks.

Q. And was there again a discrepancy in the gross income as computed by you and Mr. Simonson?

A. Yes, very small, \$50.00. My corrected gross

(Testimony of Allen Brown.)

income was [490] \$50.00 higher than Mr. Simonson's. I believe that was a matter of computation.

Q. With reference to the year 1952, would you state what that is?

A. The 1952 as determined by me is \$129,322.79, by Mr. Simonson \$127,410.77. Gross income reported was the same, \$97,952.27, which is 75.7 under my determination and 76.9 under Mr. Simonson's. The gross income deposited under my calculations is \$127,636.34, which is 98.7 per cent of the gross income deposited. Mr. Simonson's is \$125,724.32 of the gross income which was deposited or 98.7 per cent of the gross income which was deposited in the bank or banks.

Q. The 1953?

A. \$117,550.40 and Mr. Simonson's is \$116,865.89. The gross income reported is the same in both cases, \$102,901.72, which is 87.6 per cent of the gross income under my calculations, 88.1 per cent under Mr. Simonson's of the gross income deposited \$112,570.67 which is 95.8 of the gross income. Mr. Simonson's calculations, the amount deposited was \$111,865.89, which is also 95.8 per cent of the amount he calculated to be correct.

Q. With reference to Exhibits 93, 94, 95, and 96, which I believe are recapitulation and computation of the tax for the four years in question by Mr. Simonson, have you [491] examined those exhibits?

A. Yes, I have.

Q. And do they appear to be a correct computation of the tax based upon figures Mr. Simonson

(Testimony of Allen Brown.)

used? A. Yes, they do.

Q. Now, Mr. Brown, you became acquainted with Mr. Palermo in 1954, as you stated, and have you since that time had dealings with Mr. Palermo?

A. Yes.

Q. Involving what?

A. Primarily the—the computations and recaps and investigation in connection with that. However, I have prepared his individual tax returns or his joint tax returns for he and Mrs. Palermo for 1954, 1955 and 1956.

Q. In the course of this preparation of those tax returns you have become acquainted with his business operations in logging, as well as the hotel business? A. Yes.

Q. Do you know what he paid for this hotel?

A. Not specifically without reference to my files in that connection. It would be in the neighborhood of ninety-five to \$100,000.00, including the mortgages assumed and contracts.

Q. And are you acquainted with the operation of that hotel as it was operated from the accounting standpoint until it [492] was disposed of?

A. Yes.

Q. Was there any profit realized from the operation of the hotel? A. There was none.

Q. Do you know what the loss in the operation amounted to?

A. Generally in 1955 and 1956 the net operating loss in each of those years was \$17,000.00 and some dollars and cents, \$17,000.00 in each year.

(Testimony of Allen Brown.)

Q. Insofar as the computations which you made and delivered to Mr. Simonson and Mr. Blankenship, was that accomplished at Mr. Palermo's direction to you? A. Yes.

Q. After you first became acquainted with Mr. Palermo did you go to White Salmon?

A. Yes.

Q. Did you have other clients in that area?

A. In the general area, yes.

Q. And did you at that time in 1954 investigate Mr. Palermo's reputation—— A. I did.

Q. ——in that area? A. I did, excuse me.

Q. Did you ascertain his reputation for honesty and truthfulness and being a law-abiding man as of that time? [493] A. I did.

Q. And what did you find out?

A. I found it to be good.

Mr. Moore: I think that is all.

Cross-Examination

By Mr. Bantz:

Q. I take it, while I have these in my hands, that the computations of tax that the Government figured out for the years 1950 through 1953 are correct so far as you are concerned? A. Yes.

Q. There apparently is no discrepancy between any of the figures except with minor variation that Mr. Simonson put in evidence through his summaries than what you have put in yours, except maybe a few checks we have talked about, is that correct?

(Testimony of Allen Brown.)

A. That is correct. I think that the major errors are items that he couldn't identify and we have included some of those.

Q. Yes. You have made out the income tax returns now, I take it, Mr. Brown, for the last three years, is that correct? A. That is correct.

Q. Mr. Palermo has assisted you in giving you the necessary material to make out those income tax returns? [494] A. Yes.

Q. Now, you reviewed the Plaintiff's Exhibits 1, 2, 3, 4, 5 and 6, which are the income tax returns of 1948 through 1953, I take it, is that correct?

A. That's right.

Q. Now, did you also review in connection with that the exhibits that Mr. Bates had that were termed work sheets for Mr. Bates which were Exhibits 71, 72, 73, and 74? Do you recall what I am talking about? A. Yes.

Q. And did the gross receipts as far as you are concerned compare exactly as to what was put on the income tax return?

A. The gross receipts indicated in these work sheets?

Q. Yes; the Bates work sheets.

A. Yes; to the best of my recollection, yes.

Q. And didn't Mr. Bates' work sheets agree with the Exhibits 26, 27, 28 and 30 which were the ledger sheets for gross receipts of Mr. Palermo, or books, whatever you call them? A. Yes.

Q. In other words, now, the books that Mr. Palermo kept and the records that he turned over to

(Testimony of Allen Brown.)

Mr. Bates and the income tax returns all coincide, don't they? A. As regards gross receipts.

Q. Yes; as regards gross receipts. [495]

A. Yes.

Q. And there was a gross understatement for each of the years involved from 1950 through 1953 that you have checked yourself, is that right?

A. Yes; there were.

Q. And those figures are correct that we have put in, insofar as you are concerned, being an accountant? A. Yes.

Q. Actually, there is somewhat of a difference on Defendant's Exhibit 101, and that comes from the fact that some of those items that Mr. Simonson couldn't put his finger on he left off and did not count as income, is that right?

A. That's right.

Q. As far as you were concerned was Mr. Simonson fair in making up his statement then?

A. Yes; I think so.

Q. Now, I notice in Defendant's Exhibit 101 that you have gross income reported for the year 1950 as 79 per cent, no, 74 per cent. Now, that means 74 per cent of your gross income as far as you were concerned, and that was because you added the additional items to it, is that right, Mr. Brown?

A. Yes; that's right.

Q. And he reported in 1951, as far as you were concerned, 81.7 per cent of his income? [496]

A. That is right.

(Testimony of Allen Brown.)

Q. And in 1952 he reported 75.7, is that correct?

A. Yes.

Q. I mean, I am reading from this exhibit?

A. Yes.

Q. And in 1953 he reported 87.6 per cent of his income? A. Yes.

Q. Now, did you add up the total amount of his income that he did not report during those four years?

A. I may have. I have a lot of work papers in those files. I think I did but I can't recall now.

Q. Now, we have had some discussion with reference to Plaintiff's Exhibit 66 in which it was brought out that there was a \$10,000.00 item that apparently you felt and feel was an error as far as you were concerned, is that correct?

A. That is right.

Q. I am taking it, Mr. Brown, you are assuming the responsibility of the \$10,000.00 the way you have testified? A. I certainly am.

Q. Did you feel that Mr. Palermo told you about this \$10,000.00?

A. I think I felt that he had when I asked him about it. I think I felt he had answered my question. I was negligent in not asking him further questions about it. [497]

Q. Now, did he tell you about all of his deposits and his checks and everything else that he had, did he freely tell you those things?

A. Absolutely. Yes; absolutely.

Q. And the \$10,000.00 then that was in the bank

(Testimony of Allen Brown.)

that he had transferred, you felt that he had told you about it and you paid no further attention to it?

A. That's right. I made an assumption as to what he said.

Q. You were assuming, weren't you, that he was telling the truth about it, then?

A. I never had any other reason to feel otherwise.

Q. Now, did he tell you about the—during the years 1950 through 1953 that we are talking about, did he tell you about any of his undeposited checks when you were talking to him?

A. Not that I recall.

Q. In other words, your questioning to him, I take it, was enough that he should have told you about the undeposited checks, though?

A. Possibly. I don't recall the exact manner of my questioning him about these receipts.

Q. You have reviewed Plaintiff's Exhibits 99, 100—rather, Defendant's Exhibits for Identification 98, 99, and 100 in connection with this trial?

A. Yes. [498]

Q. Those books and records have not been admitted yet, but do those books and records coincide with all the testimony we have had here?

A. As regards gross receipts?

Q. Yes; gross receipts.

A. Gross receipts on the pages labelled gross earnings.

Q. I believe you stated, didn't you, that the summaries by Mr. Simonson are correct as far as you are concerned?

A. Yes.

(Testimony of Allen Brown.)

Q. I want to talk to you a minute about that hotel. When did he buy that hotel, as far as your records show?

A. September—September of 1954, I believe.

Q. How much cash did he pay for that now, down?

A. According to the statement I received from—if I may explain a little bit, he obtained the services of an accountant in Hood River to take care of the detail of the hotel and its operation, and so on. The statement submitted by that accountant and discussions that I had with him and Mr. Palermo, the original cash that was invested was in the neighborhood of \$30,000.00.

Q. And he operated it, then, a couple of years, I take it?

A. Well, he operated it from that time up until May 1st of this year, 1957.

Q. And you took care of that when you made out his income tax for 1954, 1955 and 1956? [499]

A. Yes.

Q. Now, you state that he had a \$17,000.00 loss each year?

A. Yes.

Q. Was that before or after depreciation?

A. After depreciation.

Q. He took his depreciation on that building?

A. Yes.

Q. That actually is not a \$17,000.00 cash loss, is it?

(Testimony of Allen Brown.)

A. No, it would be more in the neighborhood of \$12,000.00.

Q. Now, I take it, in all of your dealings you found Mr. Palermo truthful, and you checked his reputation for truthfulness and it was good. Did you find that he always told you the truth when you made out his income tax, Mr. Brown?

A. Yes, in the manner in which I questioned him about his income.

Q. Well, now, let us just get down to this: You were in there for an audit and I am assuming that you checked everything that you could to come up with a true net worth statement and you certainly discussed everything you could think of with Mr. Palermo, is that right?

A. Yes.

Q. Now, you found that if you would ask a question on anything that he would tell you the truth about it?

A. To the best of my knowledge. [500]

Q. Yes. And you found out when you made out the returns that to the best of your knowledge he told you everything that he should in preparing the returns?

A. At the time I prepared the returns, yes.

Q. Now, I am assuming that you made out his 1954 income tax return, is that right?

A. Yes.

Mr. Bantz: Would you please mark that for Identification.

The Clerk: Plaintiff's 102.

Q. Now, handing you Plaintiff's Exhibit 102

(Testimony of Allen Brown.)

for Identification, would you please examine that, Mr. Brown. A. Yes.

Q. Now, in reference to 102 this purports to be the 1954 income tax return of Palermo and wife, is that correct? A. Yes, that is correct.

Q. And is that their return?

A. That is the return that was originally submitted, yes.

Q. And was that prepared by you?

A. Yes.

Q. And you obtained the figures from necessary work papers from Mr. Palermo, I take it?

A. From the best information available, yes.

Q. Now, during the year 1954, and I am assuming that this is correct, you have on here the total receipts of \$107,751.78, [501] is that correct?

A. That is what it says there.

Q. Now, you keep saying that it says there. I am assuming that you—did you amend this, or something? A. No, I haven't yet.

Q. You are about to amend it one of these days, aren't you? A. Yes.

Q. The truth of the matter, Mr. Brown, is that there are some receipts left off of 1954, is that correct? A. Yes.

Q. And do you have any idea how much of the receipts are unrecorded of the 1954?

A. Not without referring to my records.

Q. Well, would the figure of \$4,960.67 seem very close to it? A. Well—

Mr. Bantz: Would you mark this, please.

(Testimony of Allen Brown.)

The Clerk: Plaintiff's 103.

Q. Now, handing you Plaintiff's Exhibit 103 for Identification, and you being an accountant, I assume you can recognize what it is?

A. That appears to be an analysis of 1954 receipts, showing total deposits and so on.

Q. All right. Now, just hold on to 102 and what do you show on 102 for that year?

A. From logging operations \$107,751.78. [502]

Q. And that is the same balance that we are starting with up here, is that correct?

A. Yes.

Q. Now, you feel that the figure of about \$4,960.67 could be correct insofar as having been left off of gross receipts in 1954, Mr. Brown?

A. Yes.

Q. Now, let me ask you this: In 1954 Mr. Palermo knew he was being investigated by the Internal Revenue, didn't he?

A. Yes, he did.

Q. And so did you, didn't you?

A. Yes.

Q. And he went over it in greater care in 1954 with you to make a proper income tax return, didn't he?

A. I think he felt that, yes.

Q. But when the truth of the matter was known he didn't tell you about \$4,960.67 of unreported checks, did he?

A. Apparently not.

Q. In other words, Mr. Brown, some twenty checks totaling \$4,960.67 was neglected insofar as he was concerned?

A. Insofar as his records were concerned, yes.

(Testimony of Allen Brown.)

Q. And he gave you his records in 1954 to make his income tax return, is that right?

A. I utilized the bank statements to recap income for 1954.

Q. But you also used his expenses for 1954?

A. I recapped every check that he used to give his expenses.

Q. Mr. Brown, if he had the roughly \$5,000.00 in there in his books and shown as gross income you would put it on his income tax return, is that correct?

A. Yes, I certainly should have, but I didn't rely on his books.

Q. No. I am not questioning your integrity, Mr. Brown. I want your answer, Mr. Brown, if the material was before you either by Mr. Palermo, by his books, records and bank statements and what you had talked to him about, if he had told you and you had any record of the \$5,000.00 you would have placed it on his income tax return?

A. Yes, indeed.

Mr. Bantz: You may examine.

(Testimony of Allen Brown.)

Redirect Examination

By Mr. Moore:

Q. Now, Mr. Bantz has asked if you felt that Mr. Palermo was truthful with you with relation to the information he gave you with reference to this omission for 1954. Do you believe that Mr. Palermo was truthful with you when he gave you the information concerning the 1954 income?

A. I think he was at that time, yes.

Q. Did you also have some trouble with omissions in 1955 and 1956?

A. Yes, I did.

Q. What year? [504]

A. 1956.

Q. And what happened then?

A. Before 1956 Mr. Palermo utilized the services of a man in White Salmon who had formerly been an auditor with the State Tax Commission and he was keeping detailed records of—

Mr. Bantz: Your Honor, I want to object to going beyond the cross-examination and having what should be in the direct examination unless I have the right to go back into that, as long as we go into 1955 and 1956, and I would object as to what should be a matter of direct examination. As far as I am concerned I opened up 1954 and not any further, and I am going to object on that ground.

The Court: Well, if counsel goes into 1955 and 1956 you would have the right of cross-examination certainly.

Mr. Bantz: Yes.

(Testimony of Allen Brown.)

A. This man kept a record—a detailed record of logs sold and money coming and totaling his deposit records and totaling his payroll records for him. He was a man that I knew and I had perfect confidence in him and was a man who could do that class of work. When these recap sheets were prepared and presented to me for recap for 1956 they appeared to be reasonably accurate upon cursory examination but I again decided that I should review the bank deposit and the accounts and going into that I found that [505] there was \$13,000.00 that were not on the sheets, and I called on this man and he said that all the income that had any reference to that year was there and after reviewing these I found that these were for prior years deliveries, and he had the deposit slips and he himself had not cross-checked the deposit slips with his receipts.

Q. Was that a mistake of the gentleman you referred to or Mr. Palermo?

A. In this case it was a mistake of the gentleman referred to.

Mr. Moore: I think that is all.

Recross-Examination

By Mr. Bantz:

Q. Mr. Brown, it appears that everybody is making a mistake along here but Mr. Palermo. In 1956 when you made out his income tax return did you catch it before you made it out or after you made it out?

A. As I was making it out.

Q. But you made it out correct in 1956?

A. Yes, I think I have.

(Testimony of Allen Brown.)

Q. From what figures you got from Mr. Palermo and what figures you had?

A. Yes, that is right.

Q. Now, to begin with, let us take 1956 that you had so much trouble with. If Mr. Palermo had kept his gross receipts instead of just keeping some unreported ones as he had in [506] 1953 you wouldn't have any trouble at all would you?

A. I don't understand what you mean, sir.

Q. Let us put it this way: There has been no question about expenses insofar as this case is concerned, is that right?

A. That's right.

Q. And if Mr. Palermo had turned into an accountant of any kind, a C. P. A., lawyer-accountant, old-man accountant, or young-boy accountant, if he had turned it in a proper income tax return, is that the truth?

A. I assume that the person making the return if he accepts the return would make the return in accordance with the information he got.

Q. Yes.

A. Yes, within certain limits and I might say that some accountants would go further to prove the information than others would.

Q. Well, you have got to take somebody's word if you are asking him point blank for him to tell the truth?

A. Well, we wouldn't necessarily assume that it was so.

Q. Would you have accepted that as the truth when you, in 1954, questioned Mr. Palermo?

(Testimony of Allen Brown.)

A. I think as far as we had gone at that time I think that the general knowledge that we had of Mr. Palermo and his background and the way he did business, I think that the manner in which I asked him the questions that he answered [507] me truthfully.

Q. But he did not tell you about the \$5,000.00 which he had on gross receipts, isn't that a fact?

A. Yes, apparently that is a fact.

Q. If he had reported it you would have reported it?

A. That's right.

Q. If he had in 1950, 1951, 2 and 3 reported to Mr. Bates his gross receipts, assuming that Mr. Bates would make out his income tax the same as he did as in evidence, those gross receipts would have shown on his income tax?

A. Yes, assuming that Mr. Bates would make it out.

Q. All right, Mr. Bates was only off one cent on \$100,000.00 of gross income, wasn't he?

A. Yes.

Q. Each year, Mr. Brown, including 1956 until you got it done there was a certain amount never reported to any accountant or any individual that was responsible for making up the income tax, is that right.

A. Well, it isn't true for 1955.

Q. Well, are you prepared to talk about 1955 on the gross receipts?

A. Well, I will tell you how I prepared it if you want to know. I used bank deposits on the basis

(Testimony of Allen Brown.)

that I obtained it for every person he had done business with in 1955.

Q. In 1954 you did the same thing, didn't you?

A. No. [508]

Q. You contacted all the people, didn't you?

A. Not for 1954, Mr. Bantz.

Q. You stated on the stand that you had worked on his deposit slips to see who he had done business with?

A. I did not. I said I used the bank statements for 1954, the bank deposit slips.

Q. I think on the stand you used Exhibits 14 to 19 which are deposit slips?

A. No, that is for 1950, 1, 2, and 3.

Q. Oh, you went to the bank statements?

A. Yes, I used those years insofar as they were considered to be the indictment years.

Q. The indictment years? A. Yes.

Mr. Bantz: I will be through in just a minute, your Honor, if I may.

The Court: Yes.

Q. Handing you Plaintiff's Exhibit No. 101 which is a schedule you made out? A. Yes, sir.

Q. For 1950, \$23,130.41, is that right?

A. Yes, pretty close.

Q. 1950 is \$23,130.41 and 1951, \$22,001.48, 1952, \$31,370.52, 1953, \$14,068.68? A. Yes. [509]

Q. So far as roughly adding those up here, then from your own computation Mr. Palermo didn't report for 1950, 1951, 1952, and 1953 the sum of \$91,-151.09? A. For four years?

(Testimony of Allen Brown.)

Q. Yes, for four years. A. That's right.

Mr. Bantz: That is all.

The Court: Any other questions?

Mr. Moore: I will ask him about two and I will be through.

The Court: I thought we might finish with this witness this morning if it isn't too long.

Reredirect Examination

By Mr. Moore:

Q. With reference to those four years how much did Mr. Palermo earn?

A. The gross receipts——

The Court: How much did he earn?

A. Gross earnings.

The Court: Yes.

Q. Yes, can you estimate them pretty closely?

A. About \$456,000. \$456,000, roughly, not adding them exactly.

The Court: He just wanted an approximation.

Q. Over \$450,000? A. Yes. [510]

Mr. Moore: That is all.

The Court: Anything else with this witness?

Mr. Bantz: No, that is all.

(Witness excused.)

The Court: Ladies and gentlemen of the jury, I have a number of other matters to take up after lunch which are not connected with this case, and so I am going to suspend this case until 2:30, and the jury will be excused in connection with this case until 2:30. The court will recess now until 1:30.

July 29, 1957, 2:35 P.M.

The Court: All right, proceed.

JOE PALERMO

the defendant herein, called and sworn as a witness on his own behalf, was examined and testified as follows:

Direct Examination

By Mr. Moore:

Q. Your name is Joe Palermo? A. Yes.

Q. And you are the defendant in this case?

A. Yes.

Q. Now, Joe, if you can't hear me you speak up?

A. I will.

Q. Where were you born, Joe? [511]

A. Victoria, B. C.

Q. When? When were you born?

A. 1909, January 9th.

Q. And when did you come to the United States?

A. I was four years old, 1913.

Q. Then did you subsequently become a naturalized citizen of the United States? A. Yes.

Q. What year was that? A. 1946.

Q. Now, after you came to the United States, I assume if you were four years old you came with your parents? A. Yes.

Q. And how many children were there, how many brothers and sisters did you have?

A. I have four brothers and two sisters.

Q. Where did you live with your parents up until you got married?

(Testimony of Joe Palermo.)

A. In Olympia, Washington.

Q. And what did your father do for a living?

A. He was a farmer.

Q. How far did you go through high school?

A. Eleven years.

Q. And where was that?

A. That was in smaller grade schools surrounding Olympia and [512] high school at Olympia.

Q. Then, after you graduated from high school what did you do? A. I didn't graduate.

The Court: Eleven years, he said.

Q. Pardon me, after you finished high school?

A. I went to work at the sawmill.

Q. At Olympia? A. At Olympia.

Q. Now, your wife has testified you were married in 1932? A. That is correct.

Q. How long did you work there before you were married?

A. I would say three and a half years—four years.

Q. Then, after you were married she testified that you worked for awhile for her father and then went back, I believe, to Olympia, is that correct?

A. Yes, correct.

Q. And you worked in the sawmill again?

A. That is right.

Q. Then, when did you go back working for her father?

A. I went back working at the sawmill about a short period, six or seven months and then I went back in the woods and worked for Mr. Zunke.

(Testimony of Joe Palermo.)

Q. That would be about 1934, I believe?

A. That would be about that time.

Q. And then your work with Mr. Zunke was doing what? [513]

A. At that time I was cutting logs and driving truck?

Q. And did you continue to do that work for him until 1947? A. Yes, I did.

Q. Where did you live during that period of 1934 to 1947?

A. At that time that was first at Port Angeles, Washington, for a period of one year. Then, from there we went to logging at Arlington, Washington. From Arlington, Washington, to Twisp and from Twisp—I might have that turned around—I believe I went to Arlington last and then from Arlington to Cle Elum, Washington.

Q. How long were you at Cle Elum?

A. Approximately five years.

Q. And, then, from Cle Elum is that where you went to White Salmon? A. Yes.

Q. Now, your father-in-law testified that up until the early '40's your income had been rather small from him and that thereafter you earned about \$4,500.00 per year; is that about right?

A. That is about correct.

Q. Then, in 1947, at the start of that year, you were driving truck for Mr. Zunke, is that correct?

A. Yes, that is correct.

Q. And living down at White Salmon?

A. That's right. [514]

(Testimony of Joe Palermo.)

Q. Now, what did you have that you acquired from Mr. Zunke in order to go into the logging business?

A. I acquired a truck and a trailer and a loader and some tools and accessories you might need, like tongs and so forth.

Q. And did you pay him anything as a down payment on that? A. I did not.

Q. Do you recall what you were supposed to pay him for the full purchase price?

A. I didn't get that.

Q. What was the total purchase price of the stuff you were buying from Mr. Zunke?

A. The truck was \$3,000.00 and it was on a contract and I couldn't remember the payments on it, and the loader and the trailer, I can't give you a definite price on that, I don't remember.

Q. The truck, you took over the contract that he was already buying it on? A. Yes.

Q. Did you have any stumpage at that time?

A. I didn't have any of my own.

Q. I don't know if the term has been properly defined here, but would you tell the jury what stumpage is?

A. Well, stumpage is what we call it up there, it is what we cut up and you got the trees embodying the logs and at [515] that time when we were cutting the stumpage if it was five or six dollars per thousand that is what we paid when we hauled those logs to the mill, it would vary from that, some

(Testimony of Joe Palermo.)

would be five dollars and some would be six dollars and it would be more, that was how we paid,

The Court: Stumpage is standing timber; is it standing up?

A. Yes.

The Court: Stumpage means standing timber that you buy?

A. Yes.

The Court: All right.

Q. When did you acquire the standing timber or stumpage for yourself?

A. Well, I started acquiring timber of my own, oh, it was about two years later that I started buying timber and land.

Q. During that interval until you acquired your own stumpage what were you doing; hauling logs for somebody else?

A. No, I was buying stumpage.

Q. You were buying timber from loggers and selling it?

A. Yes.

Q. Now, approximately how many people did you have working for you during the period, say, from the time you started until the end of 1953, during the year?

A. When I started I only had four and it lasted for—I had [516] four of my own and I hired the skidding, the skidding of the logs I hired out and it wasn't my employees, and later I ended up with a period of about four or five years with six employees.

(Testimony of Joe Palermo.)

Q. And what did you, say, at the end of 1953, have in the way of logging equipment?

A. All of it?

Q. Yes, if you recall.

A. I had a "cat," a loader, two trucks, and that was about the limit of the equipment.

Q. Now, from the time that you left high school, Mr. Palermo, until you went into business on your own, did you do any other kind of work other than the driving truck or cutting timber or things like that?

A. No, I didn't, outside of sawmill work.

Q. And you worked in a sawmill, working in a sawmill?

A. Yes.

Q. What kind of work was it that you were doing, say, in the sawmill specifically?

A. Well, when I started in the sawmill I was handling lumber on the green chain and when I left I was doing odd work, and they had only four days a week work. At that time I was driving a carrier and when I quit I was helping with lumber on the green chain also in my spare time.

Q. Now, when you started in business for yourself was your [517] son working for you then?

A. Not at the time that I started.

Q. Did he subsequently?

A. It was later years.

Q. He worked for you for awhile?

A. Yes.

Q. Say, in 1947 were both your son and your daughter living at home with you?

A. Pardon?

(Testimony of Joe Palermo.)

Q. In 1947 were both your son and your daughter living at home with you? A. Yes.

Q. And, then, since that time your son has married and gone out on his own?

A. Yes, that's right.

Q. And your daughter still lives at home?

A. That's right.

Q. And did you own your home in 1947 when you started in business? A. Yes, I did.

Q. And when had you acquired that home?

A. That home I acquired in I believe it would be about 1943 or 4.

Q. And had you completed paying for it in 1947?

A. Yes. [518]

Q. Do you recall how much you had paid for that home? A. \$2,000.00.

Q. \$2,000.00? A. Yes, \$2,000.00.

Q. Now, subsequently you did acquire another home, did you not? A. Yes, I did.

Q. And when was that?

A. I believe it was around 1950.

Q. And do you recall what you paid for it?

A. Pardon?

Q. How much did you pay for it?

A. It was approximately \$10,000.00. I don't remember whether it was a little over. It wasn't under but it might have been a little over because there was a lot involved, and I don't remember whether I bought it at that time or not.

Q. Was this a new home? A. No.

Q. And what construction?

(Testimony of Joe Palermo.)

A. Frame construction.

Q. And you have completed paying for that, have you not? A. Yes, I have.

Q. Now, you also have acquired some homes for rental purposes, have you not? [519]

A. Yes, I did.

Q. And those are at White Salmon?

A. They were.

Q. Do you still have them? A. No.

Q. Now, the other day I believe there was some reference made to the fact that you at one time owned a Cadillac. Is that correct?

Mr. Bantz: I didn't get that, Mr. Moore; what was that?

Mr. Moore: Owned a Cadillac.

The Court: How was that; I didn't get that.

Q. You at one time owned a Cadillac?

A. Yes.

Q. Do you recall when it was that you purchased the Cadillac? A. That was in 1953.

The Clerk: I am marking the Defendant's 104 and 105, your Honor.

Q. Handing you Defendant's Exhibit for Identification No. 104, would you state what that is?

A. That is a conditional sales contract on a Cadillac, 1953.

Q. And handing you Defendant's Exhibit for Identification No. 105, would you state what that is?

A. That is a payment on the car, \$1,577.00 signed by Mr. Palermo.

(Testimony of Joe Palermo.)

Q. That was the down payment? [520]

A. The down payment with the old car.

Mr. Bantz: I didn't hear the last statement. That was the down payment.

(Answer read.)

Mr. Moore: I will offer in evidence 104 and 105.

Mr. Bantz: No objection.

The Court: Admitted.

(Whereupon, said documents were admitted in evidence as Defendant's Exhibits No. 104 and 105.)

Q. Handing you Defendant's Exhibit 104 and Plaintiff's Exhibit 23, Mr. Palermo, that conditional sales contract is dated what date?

A. The 6th day of February, 1953.

Q. Showing you Plaintiff's Exhibit 23, which is the bank statement for your account at the White Salmon Branch of the National Bank of Commerce, what was the bank balance in your checking account on February 6th, 1953? A. \$55,606.62.

Q. Now, this conditional sales contract shows a total time price of \$5,328.31, is that not true?

A. Correct.

Q. And included in that price is the cost of car insurance at \$121.00? [521]

A. That is correct.

Q. And a finance charge of \$77.28?

A. That's right.

(Testimony of Joe Palermo.)

Q. And this provides for payment of twelve monthly instalments of \$124.69?

A. That's right.

Q. This contract also shows, Mr. Palermo, that there was a trade in of \$2,255.03. Do you know what it was that you traded in on that car?

A. I believe it was a '51 Oldsmobile.

Q. During the course of your acquiring various properties or equipment have you purchased other items by conditional sales contract, Mr. Palermo?

A. Yes, I have.

Q. What else have you purchased?

A. Well, I purchased trucks.

Q. Trucks?

A. And "cats" and loaders and incidentals for the house.

Q. Such as?

A. Refrigerators, electrical stoves, deepfreeze.

Q. During what years did you purchase trucks on conditional sales contracts?

A. 1950-1947 I had this one to pay off that I bought from Mr. Zunke, in 1959 I believe.

Q. 1949? [522] A. Pardon?

Q. 1949?

A. 1949, I believe, I bought another one on conditional sales contract and in 1953 or 4—I think it was '54 that I bought another one on conditional sales contract.

Q. And you say you bought a loader?

A. Yes.

Q. When did you buy that?

(Testimony of Joe Palermo.)

A. That was the year—I couldn't tell but I believe it would be right around 1950—1949 or 1950.

Q. And when did you buy the "cat"?

A. In 19—the first was in 1949 and the last one in 1951.

The Clerk: Marking Defendant's 106.

Q. Handing you Defendant's Exhibit for Identification 106, would you state what that is?

A. That is a chattel mortgage on a 1953 International Short Logger.

Q. Dated what? Pardon me, it is on the other side.

A. Dated August 12th, 1953.

Q. And was that executed by you as a mortgage or through the acquisition of the truck; did you go out and borrow money on the truck or was that to buy it?

A. No, it came from the same company.

Q. You bought the truck from Morris Nelson Company? [523]

A. Yes.

Mr. Moore: I move the admission of 106 for Identification.

Mr. Bantz: This is July 10, 1953, is that right?

Mr. Moore: Yes, it is a mistake, your Honor, instead of August 12, 1953, it is July 10, 1953.

The Court: There is no objection?

Mr. Bantz: No objection.

The Court: It will be admitted.

(Whereupon, said chattel mortgage was admitted in evidence as Defendant's Exhibit No. 106.)

The Clerk: Marking Defendant's 107.

(Testimony of Joe Palermo.)

Q. Handing you Defendant's 107, and showing you Defendant's Exhibit 106, would you state what 107 is?

A. It is a check made out to Morris Nelson Company for \$6,000.00 on July 10, 1953.

Q. And what was that for?

A. That was for that truck.

Q. That is the cash down payment that went with the acquisition of the truck? A. Yes.

Mr. Bantz: No objection.

The Court: It will be admitted. That is [524] 107?

The Clerk: 107, your Honor.

(Whereupon, said check was admitted in evidence as Defendant's Exhibit No. 107.)

Mr. Moore: Your Honor, we would like to have these identified. I have shown them to Mr. Bantz. These are—as I am sure that the witness will testify because there is no question about them—these are his duplicate deposit slips on the right hand and in this box are cancelled checks and bank statements for the years in question, and I thought as long as we weren't going to make any recap on them we might put them in as a single exhibit and these as a single exhibit and there will be no need of taking them apart.

Mr. Bantz: I have no objection.

The Clerk: 108 is the duplicate deposit slips and 109 is cancelled checks and bank statements.

The Court: Do you mean to say that there is no

(Testimony of Joe Palermo.)

objection to that method of marking them of their admission?

Mr. Bantz: I have no objection—Did you ask the witness if he changed them. I have no objection if he hasn't changed them on his original records, your Honor.

Mr. Moore: I will ask him.

Q. Mr. Palermo, handing you Defendant's 108 would you state what those articles are? [525]

A. These are bank deposit slips to the Security State Bank at White Salmon.

Q. Those are duplicate deposit slips, are they not?

A. Yes.

Q. And they cover the Security State Bank and it is the deposit slips also of its successor in interest the National Bank of Commerce of White Salmon?

A. That's right.

Q. Are they for the period starting May 24, 1948 and——

Mr. Moore: I believe, your Honor, one of these goes on into 1954 but we would terminate it as of December 31, 1953, as far as this case is concerned.

Q. Now, these duplicate deposit slips, Mr. Palermo, are not a complete copy of the deposit slips that Mr. Babb put in evidence, are they?

A. No.

Q. There are some omissions?

A. That's right.

Q. But these are the deposit slips which you had in your possession when Mr. Blankenship contacted you?

A. Yes.

(Testimony of Joe Palermo.)

Q. And these are the duplicate slips that you delivered to me for turning over to Mr. Blankenship?

A. That is right.

Q. And there have been no changes in these slips since that [526] time?

A. I don't believe so.

Mr. Bantz: No objection.

The Court: They will be admitted. 108.

(Whereupon, said deposit slips were admitted in evidence as Defendant's Exhibit 108.)

Q. And handing you Defendant's Exhibit 109 for Identification, would you state what they are?

A. Those are cancelled checks made out in Joe and Bertha Palermo's name.

Q. Well, those are cancelled checks and bank statements, are they not? A. Yes.

Q. In the Security State Bank? A. Yes.

Q. And also its successor the National Bank of Commerce? A. Yes.

Q. And they are bundled according to the years, are they not? A. They are.

Q. And these are all the cancelled checks and bank statements that you had in your possession for the years '48 through '53?

A. That's right. [527]

Q. And which you delivered to me for delivery to or for viewing by Mr. Simonson and Mr. Blankenship? A. That's right.

Q. And to your knowledge there has been no alterations or deletions? A. That's right.

(Testimony of Joe Palermo.)

Q. Now, incidentally, there are some of the monthly statements are not present, is that true?

A. That is correct.

Mr. Moore: I can advise the Court that that is the situation in 1951 that I know of. I request admission in evidence of 109.

The Court: Do you wish to interrogate?

Mr. Bantz: I do not; no, your Honor.

The Court: They will be admitted then.

(Whereupon, cancelled checks and bank statements admitted in evidence as Defendant's Exhibit No. 109.)

Q. Handing you Defendant's Exhibit No. 98 for Identification, would you state what that is, Mr. Palermo?

A. Well, this is where I kept my records.

Q. For what year? A. For 1950.

Q. And handing you Defendant's Exhibit No. 99 for Identification, [528] what is that?

A. That is for 1951.

Q. That is your record book for 1951?

A. That is correct.

Q. And handing you Defendant's Exhibit 100 for Identification, what is that?

A. That is the record for 1952 and 1953.

Q. And it also includes 1949, does it?

A. Yes, it is right here on the front page, yes.

Mr. Bantz: May I ask him one question: Have you made any corrections, additions or deletions on

(Testimony of Joe Palermo.)

these records since you have had them as your records? A. No, I have not.

Mr. Bantz: I have no objection, your Honor.

The Court: They will be admitted. 98, 100, 99.

(Whereupon, said documents were admitted in evidence as Defendant's Exhibits Nos. 98, 99 and 100.)

Mr. Moore: I think that the record should show that in some of these there are red check marks that Mr. Brown testified he made in going over them.

Q. Now, Mr. Palermo, when you first went into business for yourself did you acquire the services of a bookkeeper or accountant to set up your books?

A. No, I didn't. [529]

Q. Did you have any assistance in setting them up at all? A. No.

Q. And when you continued in business, let us say, through the end of 1953, who made the entries in these books? A. Made what entries?

Q. Who made the entries in these books?

A. I didn't get that, I am sorry.

Q. Who made the entries in these books here, and with reference to year 1951 where it says "Earnings Gross" and then there is a name and a date and a figure opposite it, that is the record which you kept?

A. That is right.

Q. And in addition to "Earnings Gross" what else did you enter in these books?

A. Well, the labor on the employees for one and how much they received each payday which was

(Testimony of Joe Palermo.)

every two weeks, and stumpage bought and gross earnings and some memorandas.

Q. In general your books then except for these added memos reflect stumpage purchases by you and gross earnings and employees pay checks figures?

A. That is correct.

Q. Now, with reference to the records that are in here in Exhibits 98, 99 and 100, I will hand you 98, with reference to the figures setting forth gross earnings, when would you make those entries in the books, during the year [530] or at the end of the year?

A. Of the year, do you mean?

Q. Well, now, like on that exhibit which you are looking at, Exhibit 98, there is list of gross earnings there, is there not?

A. Yes.

Q. When would you make the entries in those books?

A. Well, the entries were made in—mostly in the evenings, maybe on Sundays or times that I would probably have time to look at them and work on them or when I would receive checks, sometimes one check or maybe more than one check and—well, there is different times.

Q. You would make them during the year, however?

A. Yes, that's right.

Q. And that is at various times?

A. Yes, that's right.

Q. Now, during this period up to the end of 1953, what was your week's work, I mean were you working four days a week or five days a week or six or seven or what?

(Testimony of Joe Palermo.)

A. Well, I was working always as a rule six days a week and most of the time there is always some repair work or something to do which has taken up a few hours on Sundays and evenings.

Q. And when you were working what time would you leave? What time would you leave in the [531] morning?

A. During the winter we would generally leave about six-thirty and during the summer we would leave home between—and depending upon the weather and how hot—sometimes at five o'clock and five-thirty.

Q. And what time would you quit work?

A. We generally worked until five o'clock unless there was something to do to hold us over a little bit.

Q. And when you quit working at five o'clock were you then at home at five o'clock?

A. No, I generally wasn't always at home at five o'clock, no, it generally took one hour to go home yet.

Q. Then, in addition to making these entries in the books, what else did you do during the evenings with reference to your logging business?

A. I worked in the woods and loaded.

Q. No, I mean did you write your checks in the evenings also? A. Yes.

Q. Is that when you took care of that?

A. Yes, as a rule I would generally write the checks and pay my current bills and put the entries of the checks I had probably on the same night at the same time.

Q. Now, your wife testified the other day that

(Testimony of Joe Palermo.)

you had a room with a place where you kept these books and things, is that correct?

A. That is correct. [532]

Q. And say that you were going to come home in an evening and working home, say, you received some checks and owed somebody some money that you had to pay, what would you do; would you take your checks and go in and do something with them?

A. I generally took the checks and put them up in my room and leave them until there was a time that I had time to go over them and I would make entries and pay bills probably at the same time.

Q. And would you spend a great deal of time on this every night?

A. Well, that would depend. There were sometimes that I only spent ten or fifteen minutes and other times spent one hour, and if there was an off day or a Sunday I would probably be able to spend one half or more of a morning.

Q. Now, you know at the present time, of course, Mr. Palermo, that all of the money which you received in 1950 through 1953 didn't get into your books here, Exhibits 98, 99, and 100, don't you?

A. Yes, I do.

Q. And you know also that all of those receipts didn't get on your income tax returns, is that correct?

A. That is correct.

Q. Now, with reference to your making out your income tax returns, when did you first go to Mr. Bates? [533]

A. I believe the first time that I approached Mr.

(Testimony of Joe Palermo.)

Bates about making out my income tax was in the first of the year 1948, I believe. I believe that is right, 1948 or 1947.

Q. And did you see him down at his real estate office? A. Yes.

Q. And did you discuss with him what it was that he wanted from you in order to make out your income tax return?

A. I didn't discuss it with him at the time.

Q. Did you go in there prepared to have him make out your income tax return?

A. Well, I went down believing I was prepared. When I first went down I didn't know what to bring exactly and so I thought I would bring what I could. I had at that time I believe the entries or the books and bank deposits and I brought them down, too.

Q. Your bank deposit slips?

A. I beg your pardon?

Q. Your bank deposit slips?

A. Yes, my bank deposit slips.

Q. And what else; was there anything else?

A. Well, I don't remember what else it was that I did bring down.

Q. And did you give those items to Mr. Bates?

A. I didn't hand them to him. I took them into his office where he does his work and laid them on his desk. He [534] looked at them but he did not need them and he asked me to go home and figure them out and bring it down in a figure.

Q. Do you mean he advised you that he did not want the bank deposits slips or anything else?

(Testimony of Joe Palermo.)

A. Yes, he did.

Q. And then I assume you went home and added up the things that he requested? A. I did.

Q. Now, when you added these items up for Mr. Bates insofar as your earnings are concerned what did you use to get the total of your gross earnings for that year?

A. What I had entered in the books I added up each column and put it down and took it down to him.

Q. And did you do that every year thereafter through your 1953 return? A. I did.

Q. And did you make use of your cancelled checks in making the totals for him of what your expenses had been? A. No.

Q. What did you use?

A. I always used a slip from whatever we bought and added up each slip.

Q. So that during these four years you didn't use your checks at all? [535]

A. I didn't use the checks at all. I just used the slips.

Q. Now, when you made these deliveries to Mr. Bates in 1951 for the 1950 tax return, as I understand it, you took the items in Exhibit 98 insofar as your gross earnings are concerned and totaled those items and gave that to Mr. Bates as your gross earnings? A. I did.

Q. Now, this is correct, is it not, that there is a page in the back of this book which includes gross earnings? A. Yes, for 1950.

(Testimony of Joe Palermo.)

Q. For 1950? A. Yes, uh-huh.

Q. Now, at the time that you delivered to Mr. Bates in January or February or March, 1951, whenever you gave this information to him for your 1950 return, according to the testimony here, you must have given him a slip of paper which said that your gross earnings were \$66,090.94, I believe it is—may I see 3, 4, 5 and 6—yes, according to your tax return and I believe that we have confirmed that that is the figure to which those figures in Exhibit 98 total, you must have given him a slip of paper that had that figure on it? A. Yes, I did.

Q. As your gross returns? A. I did. [536]

Q. At the time that you delivered those to Mr. Bates did you know that that sum of \$66,090.94 was not the total amount of money which you had received during the year?

A. Well, I was to believe that it was.

Q. You believed that it was? A. Yes.

Q. And when you signed Plaintiff's Exhibit 3, being your 1950 income tax return, and sent a check to the Internal Revenue Service for the tax on that, did you believe that the return was correct?

A. Yes, I did believe that it was.

Q. Did you believe that your gross receipts reflected on that return and the net receipts reflected on that return and the tax computed on that return were correct? A. I did.

Q. Did you sign this return and file it with the Internal Revenue Service with the intent to evade the income taxes due for the year 1950?

(Testimony of Joe Palermo.)

A. I did not.

Q. Now, with reference to the year 1951, Mr. Palermo, according to Defendant's Exhibit 99 on pages 1 and 2, there are set forth "Earnings Gross," that is correct, is it?

A. That is correct.

Q. And according to the testimony and evidence that is in [537] at the present time, you apparently totaled this page?

A. I did.

Q. And page 2?

A. Yes.

Q. Pages 1 and 2?

A. Yes.

Q. And delivered the total to Mr. Bates as your gross earnings for the year 1951?

A. That is correct.

Q. That is correct, is that right?

A. That is correct, yes, that's right.

Q. And according to the 1951 income tax return that figure was \$98,178.22, is that correct?

A. That is correct.

Q. Now, at the time that you delivered the information to Mr. Bates that your gross returns for 1951 came to \$98,178.22, did you believe that figure to be correct?

A. I did.

Q. And at the time that you signed the 1951 return for filing with the Internal Revenue Service, did you believe that figure of \$98,178.22 to be the correct total of your gross earnings for the year?

A. I did.

Q. And when you signed this return for filing with the Internal Revenue Service, did you also be-

(Testimony of Joe Palermo.)

lieve that your [538] net income as reflected on Exhibit 4, being your 1951 income tax return, and the tax computed thereon was correct? A. I did.

Q. With reference to the 1952, Mr. Palermo, on Exhibit 100, on page 34 there is a heading entitled "Gross Earning 1952," that is correct, is it not?

A. Yes.

Q. Those were entries which you made?

A. That's right.

Q. When you were providing information to Mr. Bates to do your income tax return for 1952, did you total the figures that are shown on page 34?

A. I did.

Q. And delivered the same to Mr. Bates?

A. Yes, I did.

Q. And at the time that you totaled those figures and delivered the same to Mr. Bates, did you believe that they represented the total of your gross earnings for 1952? A. I did.

Q. Now, according to your return the figure that you must have given to Mr. Bates is \$97,952.27, is that not correct? A. That is correct.

Q. And that is what you believed to be the correct amount? [539] A. It was.

Q. And when you signed your 1952 income tax return, which is Plaintiff's Exhibit 5, for filing with the Internal Revenue Service, did you at that time, Mr. Palermo, believe that \$97,952.27 was your correct gross earnings for 1952? A. I did.

Q. And at that same time did you also believe that your net profit for 1952 as reflected on the re-

(Testimony of Joe Palermo.)

turn and the income tax computed on that net was correct? A. I did.

Q. With reference to 1953, on Exhibit 100, pages 47 and 48 are two pages entitled "Gross Earnings 1953," is that not correct? A. That is correct.

Q. And according to the evidence that we have at the present time apparently you totaled the figures on these two pages and gave them to Mr. Bates as your gross earnings for 1953? A. Yes.

Q. Now, at the time that you delivered that information of your gross earnings for 1953 to Mr. Bates for the preparation of your 1953 income tax return did you believe that that total which you delivered to him was correct? A. I did. [540]

Q. As being the correct gross that you had received during the year? A. Yes.

Q. And according to Exhibit 6, which is your 1953 income tax return, that figure is \$102,901.72?

A. That is correct.

Q. Now, at the time that you signed this return for 1953, Mr. Palermo, for filing with the Internal Revenue Service did you believe that the figure of \$102,901.72, as shown on the return as your gross earnings, were the correct gross earnings?

A. That is right.

Q. And at the time that you signed this return for filing with the Internal Revenue Service did you believe that the net income reflected on your return for 1953 and the income tax computed on that net return were correct? A. I did.

Q. With reference to these four years, Mr. Pa-

(Testimony of Joe Palermo.)

lermo, 1950, 1, 2 and '53, and the tax returns which were filed in the Internal Revenue office by or for you, did you at any time file any one of these returns Exhibits 3, 4, 5 or 6 with intent to evade taxes due to the United States Government on your income?

A. I did not.

Q. I think there is in evidence here at the present time [541] exhibits demonstrating that for the years 1948 and 1949 your income tax returns did not clearly reflect the total of your gross earnings. With reference to those two years did you compile the information for Mr. Bates as to your gross earnings in the same manner as you did for 1950, 1, 2 and 3?

A. For what years was that?

Q. 1948 and 1949. A. Yes.

Q. You added them up out of the book?

A. Yes, I did.

Q. And when you delivered the information to Mr. Bates for those two years did you believe that the totals were correct that you gave him for your gross earnings? A. I did. I did.

Q. And when you signed your returns for 1948 and 1949 for filing with the Internal Revenue Service did you believe those returns correctly stated your gross income, your net income and the income tax due? A. I sure did.

Q. During the time that you have been in business, Mr. Palermo, there have been some of the checks according to the evidence here which were not deposited in either your bank account at White

(Testimony of Joe Palermo.)

Salmon or the bank account at Stevenson; you have heard that testimony, have you not? [542]

A. Yes, I have.

Q. And you are aware of the fact that some of those checks did not get deposited? A. I am.

Q. Now, while you were doing this work in 1950 to 1953, this logging, did you have cash to make any cash purchases for your logging business?

A. Cash purchases?

Q. Yes. A. Not too much.

Q. What did you purchase for cash?

A. The cash would be—would be parts or something like that would probably be out of our town.

Q. Now, where would you usually go or send for parts of items that you would have to pay cash for?

A. Portland was the main town. Portland and Vancouver.

Q. Portland, Oregon, and Vancouver, Washington? A. Yes.

Q. And those purchases would be made for something that you paid cash for?

A. Well, as a rule it would be the Alaska Junk or—I forgot the other place. There was times that we would go down there to buy accessories or a used motor or something like that and we would just generally always pay for them in cash because the people down there didn't know me [543] and I didn't know them too good.

Q. You say those people down there did not know you?

(Testimony of Joe Palermo.)

A. Well, they do now but they didn't at that time.

Q. And with reference to the purchase of other items of equipment or supplies for your logging business, how did you pay for those, by cash or by check, other of the items other than what we have just been talking about?

A. Paid by check. Those that I did not pay by cash I always paid by check.

Q. And those would have been out of what bank?

A. The National Bank of Commerce, and——

Q. At White Salmon?

A. And—Yes, White Salmon. And the Stevenson Bank up to 1952 or something like that.

Q. Well, then, the normal course of the operation of your business in making payments in the immediate area of White Salmon and Bingen, whether it was for repairs or salaries to your men or supplies or anything else, did you make the majority of those payments by cash or check? A. By check.

Q. With reference to your personal expenditures for your items which you purchased for day to day living and up in your home and your purchase of a car or for anything else, were those by cash or by check? A. By check. [544]

Q. And all of those checks which you issue, as I understand it, were either out of the White Salmon Branch of the National Bank of Commerce or out of the Stevenson Bank?

A. Yes, that is correct.

Q. Now, when did you set up this account at

(Testimony of Joe Palermo.)

Stevenson? A. I believe that was in 1948.

Q. And what was the reason for getting a bank account in Stevenson?

A. Well, at the time that I started at Stevenson I bought—I bought that old “cat” the first one that I had bought and I had to have \$2,000.00 to pay for it and the party that I bought it from he co-signed the note at the Stevenson bank for me to pay him off at \$500.00 per month until paid which I had done, and in the course of the transaction there they asked me to do some business with them, which I did.

Q. And so you maintained that bank account actively until August of 1952?

A. In 1952, yes.

Q. And then I believe the evidence shows that thereafter you did make deposits but the bank account wasn’t active?

A. That is right, uh-huh.

Q. With reference to the two banks during the time that you had these two bank accounts, in which bank did you place most of your money? [545]

A. The National Bank of Commerce at White Salmon.

Q. And since you closed up the Bank of Stevenson account up through the end of 1953 the only bank account you had—checking account was at White Salmon? A. That is correct.

Q. And up until the end of 1953 the only other account you had was this savings account down at the Bank of Stevenson? A. That is correct.

Q. Now, in the course of your operations from

(Testimony of Joe Palermo.)

1948 to the end of 1953 you purchased a home and the rental units you have referred to and some equipment and some household goods and furnishings and did you buy in addition to that some stock?

A. Some stock?

Q. Yes, some stock? A. Yes.

Q. And what was that in?

A. That was in a mine in Idaho.

Q. And what kind of mine was it?

A. Well, it was supposed to have been a gold mine and silver.

Q. And I assume that there hasn't been much gold or silver out of it. Who were the officers of that corporation that you bought stock in; where did they live?

A. At White Salmon. [546]

Q. They lived at White Salmon?

A. Yes, White Salmon.

Q. And the President is a White Salmon man, is he not?

A. That is correct.

Q. And how much did you put in that stock?

A. \$5,000.00.

Q. Now, when you bought timber stumpage after you got into business, for instance, in Exhibit 98 I notice a stumpage figure of \$11,090.30 total with checks to various—or payments apparently to various individuals, is that stumpage?

A. That is right.

Q. Now, in the acquisition of stumpage from 1948 to 1953 how did you pay for that stumpage; by cash or by check?

A. By check.

Mr. Moore: May I have 86, please.

(Testimony of Joe Palermo.)

Q. Now, Mr. Palermo, handing you Exhibit 86 and also Exhibit 98, Mr. Simonson when he was on the stand referred to the fact that according to his Exhibit 86 there was recorded in the book a \$900.00 item from S. D. S. Lumber Company in 1950 and that he had only been able to find cancelled checks for \$148.50. Now, according to Exhibit 98 your figures under gross earnings on the last page of that exhibit you will see S. D. S. to November 1.

A. Yes. [547]

Q. Do you have any idea why that shows \$900.00 in your book and apparently no check was ever given to you for \$900.00 or for any more than \$148.50 during that period of time?

A. Well, I don't know unless it could have been that I could have estimated what I had coming at S. D. S. and entered it in the book, which it could have been one or the other. In fact, I couldn't remember it.

Q. You don't know, is that correct?

A. No, I don't know.

Q. When you were keeping these books, Mr. Palermo, and keeping the gross earnings reflected in Exhibits 98, 99 and 100, was it your intention to include under the gross earnings all money that you received in the logging business?

A. I presume that I did.

Mr. Bantz: Your Honor, I request that it be stricken; it isn't a responsive answer.

The Court: Well, I am not sure that it is. What was the question?

(Testimony of Joe Palermo.)

(Last question and answer read.)

The Court: Well, I will let that stand.

Q. Was it your intention at any time that you made the entries or received checks to omit checks from your list of gross earnings in these exhibits; did you ever intend to omit checks from that [548] listing? A. Did I what?

Mr. Moore: Pardon me? I will get up here so you can hear me.

The Court: Did you intend to leave any out of your books?

A. No, I did not intend to leave any of them out.

The Court: That is what you wanted to know, isn't it?

Mr. Moore: That is what I wanted to know.

The Court: All right. We will take a ten minute recess.

(Whereupon, after the usual afternoon recess, proceedings were resumed as follows:)

Q. (By Mr. Moore): Mr. Palermo, there has been some testimony here that you purchased a hotel in 1954, is that correct? A. That is correct.

Q. Where is that hotel?

A. Hood River, Oregon.

Q. That is, I believe, right across the river, isn't it, from White Salmon?

A. About—between two and two and a half miles from White Salmon.

Q. Before buying that hotel did you confer with

(Testimony of Joe Palermo.)

anyone concerning the record of its past profit or losses? A. No, I didn't.

Q. Did you have anyone investigate that on your behalf before [549] you purchased it?

A. No, I didn't.

Q. With reference to the information that you gave to Mr. Brown concerning your gross earnings for 1954, when you gave him that information did you believe it to be true or false? A. True.

Q. Did you know what it was that was subsequently discovered to have been omitted from the gross earnings? A. I didn't.

Q. Do you know now? A. I heard it.

Q. Did Mr. Brown tell you what it was?

A. I can't recall but we did talk over some amount but I didn't catch the amount.

Q. With reference to the entries that you made in Exhibits 98, 99 and 100 for gross earnings, were these entries always made from checks that you had in your hands at the time or were the entries made at other times also?

A. They were made at both times.

Q. When would you have occasion to make an entry in gross earnings in your books when you wouldn't have a check there, what would you put in?

A. Sometimes I would put in an estimate of what I had coming.

Q. You would put in your book what you yourself would [550] estimate to be owing from that company? A. Two weeks period, yes.

Q. Now, in 1954 in the fall did you receive a let-

(Testimony of Joe Palermo.)

ter from Mr. Don Blankenship that he was going to come and see you?

A. I received a letter in the fall of 1954 that he was coming to see me.

Q. And then he subsequently came to see you?

A. Yes, he did.

Q. What was the substance of his meeting with you; what did he ask you or say to you or what did you say to him?

A. At that time he asked where I was born to begin with, where I had lived and approximately how much insurance I had and if I had any of my withholding statements at the house, which I did not, and——

Q. Did you advise him where they were?

A. Pardon?

Q. Did you advise him where they were?

A. Yes, I did.

Q. Where were they?

A. At Mr. Bates' office.

Q. All right, go ahead.

A. And he asked about how much equipment I had and about what I thought I was making gross, which I couldn't give a definite answer, and so we—I believe—— [551]

Q. Did he ask you in relation to any particular years?

A. Well, I don't remember offhand but I believe it was—it was beginning about '49 I believe or 1950 up to 1953.

Q. Up through 1953? A. Yes.

(Testimony of Joe Palermo.)

Q. And did he ask you with whom you had done business during that time? A. Yes, he did.

Q. And did you tell him? A. Yes, I did.

Q. And did he ask concerning whether or not you had an account at the Bank of Stevenson?

A. I believe he mentioned that.

Q. Did he ask you anything about how much you had down there?

A. I don't remember offhand whether he asked me how much because I wasn't sure how much, I knew but I was sure that he was going down I believe in our conversation and I believe he was going to ask and found out down there.

Q. Did he ask you how much money you had in the White Salmon Bank? A. Yes, he did.

Q. And did you tell him?

A. I told him that he—that Mr. Blankenship had the figure—it was the first of the year and I went upstairs and found mine from January and they both were alike, the figures. [552]

Q. And did he ask you anything else as to your assets, any property that you had during that period?

A. Well, he asked me about the assets I had, yes.

Q. And did you tell him? A. Yes, I did.

Q. Has there been any period, anything since you met Mr. Blankenship and subsequently Mr. Simonson, when you did not provide them with everything you had that they requested?

A. I haven't anything left so I am sure that he has everything that I had.

(Testimony of Joe Palermo.)

Mr. Moore: I think that is all.

Cross-Examination

By Mr. Bantz:

Q. Mr. Palermo, getting back to when we started here, when Mr. Moore started, you stated that you had some rental homes. Where are those rental homes? A. At White Salmon, Washington.

Q. And how many did you have?

A. There periods of years where I had gotten rid of some.

Q. Well, during the period 1952 to 1953 did you have three? A. I had four.

Q. All right, did you keep track of rentals on those yourself, did people pay you?

A. Yes. Yes. [553]

Q. And you marked the rentals down in your books?

A. I believe—well, I don't believe I did.

Q. Well, you kept track of them, didn't you?

A. Well, I had the figures of them in a memo book.

Q. Well, you did turn in something to Mr. Bates on which you kept track?

A. No, I didn't. I just told him.

Q. You just told him?

A. I told him what I had in my own book. I had a small book in my pocket.

Q. But you did tell Mr. Bates about it?

A. Yes, I am sure that I did.

(Testimony of Joe Palermo.)

Q. Now, you stated in 1953 you traded in an Oldsmobile and purchased a Cadillac—may I have 104 and 105, please—and you bought it on conditional sales contract, is that correct?

A. That is correct.

Q. You paid the sum of \$1,577.00 in cash, plus your old car, and then you owed a balance to the finance company at that time, is that right?

A. That is correct.

Q. And during that time I believe you stated that when you bought that car you had \$55,000.00 in the bank in cash, is that correct?

A. I believe that would be correct. [554]

Q. Now, also in addition then to the \$55,000.00 you had ten thousand plus some dollars for interest in the Stevenson Bank, is that correct?

A. That is correct.

Q. In other words, you had \$65,000.00 in cash when you bought it on a conditional sales contract?

A. That is correct.

Q. Now, during the year 1953 when you bought this car did you know the least amount of money that you had in your checking account at the National Bank of Commerce at White Salmon, did you know probably the least amount you would have?

A. Well, at that particular time I probably didn't.

Q. Well, didn't you keep very close track of the cash you had on hand in your checking account stubs at home, Mr. Palermo?

A. Well, as a rule I didn't too much.

(Testimony of Joe Palermo.)

Q. Well, actually, now, didn't your checking account stubs just generally within a few dollars always coincide with what the bank statement said at the end of the month, didn't it? A. I presume.

Q. In other words, you knew every day pretty close to how much cash you had at the bank?

A. Well, I didn't always know that. [555]

Q. Now, just looking here just referring to my own notes, I notice in August 26, 1953, you were down to \$48,102 and on November 12th you had \$88,552.00, and it varied between that during the year 1953. Now, that of course did not include the \$10,000.00 at Stevenson, is that correct?

Mr. Moore: You have got to answer, Mr. Palermo.

Mr. Bantz: You have got to answer so that he can take it down. A. Yes.

Q. So that during the year you had as high as \$98,000.00 in cash on hand and as low as \$58,000.00, is that right?

A. That could be. I can't remember that.

Q. Well, assuming that the exhibits in evidence are correct. Now, did you have a habit then of buying stuff on conditional sales contract when you had that much cash on hand? A. Yes, I did.

Q. Do you have a reason for it?

A. I imagine from before it might have been a habit.

Q. What? Pardon me?

A. It might have been just a habit.

Q. It was just a habit? A. Yes.

(Testimony of Joe Palermo.)

Q. Well, in other words, you found yourself with a lot of [556] money and you still went to the bank and borrowed it; when you needed it you went to the bank and borrowed it, I take it you borrowed the money; when you get a conditional sales contract that is borrowing money. You had conditional sales contracts during the years 1952 and 1953, didn't you?

A. Yes, I did.

Q. And, yet, you had all this cash on hand, is that correct?

A. I believe that is correct, that is right.

Q. All right. You also purchased trucks on conditional sales contracts, is that right?

A. That's right.

Q. And you paid the money down, and I think you stated you paid \$6,000.00, and paid the rest on conditional sales contract?

A. That would be right.

Q. Now, on all these conditional sales contracts you could keep track of how much money you owed, is that correct?

A. I should have.

Q. Well, you paid the bills, didn't you?

A. Yes, I did.

Q. And you kept track during that time each month if you owed \$125.00 on a payment you made the payment when you were supposed to?

A. That's right. [557]

Q. Were there any of those during the years 1952 and 1953 that you did not pay on them?

A. I tried not to let any slip on me.

(Testimony of Joe Palermo.)

Q. You kept up on your books and matters during the years 1952 and 1953, didn't you?

A. I did.

Q. All right. Now, we have had a lot of discussion about Mr. Bates' records which are Exhibits 70, 71, 72, and 73, I believe, and your income tax returns for the years and your books and records. Now, Mr. Palermo, I take it from your discussion that the Exhibits 98, 99 and 100 were the books and records that you kept at home and made your income tax from, is that correct?

A. That is correct.

Q. That is these books here?

A. That is correct.

Q. Now, where did you keep these books; at home? A. I kept them at home at all times.

Q. In your little room where you did your accounting work?

A. I kept them at home at my house at all times.

Q. Now, all right, I just want to go over how you kept these figures. Your wife testified yesterday that when a check came to your house she set it aside for you in a certain spot and you picked it up and took it to your room, is that correct? [558]

A. That is correct.

Q. And then you accounted for each check that came to your house, is that correct? A. I did.

Q. And it isn't correct, though, that you put them all in your book, is it?

A. That is all——

(Testimony of Joe Palermo.)

Q. All of your checks are in your books?

A. All of my checks are not in the books.

Q. There is ninety-nine of them that are not.

The Court: He is saying yes they are not.

Mr. Bantz: It is getting along late in the day, your Honor.

Q. All of your checks are not in the books?

A. All of my checks are not in my books.

Q. All right. Now, what happened to the checks when they didn't get in the books?

A. I would imagine that some of them were cashed.

Q. But you had the checks in your own possession, isn't that right?

A. That is correct.

Q. Is there any reason why you wouldn't put down in the—I am looking at Plaintiff's—I mean Defendant's Exhibit 99 and it says here May 23, Ackley and so forth, earnings gross, and you got a check, and you had it in your room; [559] how come you didn't put it down in here?

A. I imagine it is poor bookkeeping.

Q. All right, now, you apparently had poor bookkeeping from 1948 until 1954, is that correct?

A. That is right.

Q. Is there any reason why each year a certain amount of checks became bad bookkeeping?

A. Well, I used them checks for parts and things like that and personal items.

Q. Personal items?

A. And things like that.

(Testimony of Joe Palermo.)

Q. Personal items?

A. Yes, as far as I knew.

Q. Now, didn't you just testify a minute ago that the only things you used those checks for was just parts and not personal items, or are we now into personal items? A. I am sorry.

Q. Did you use these checks and cash for personal items? A. Yes, we did.

Q. What kind of personal items? What kind of personal items did you use them for?

A. Well, there would be—there would be the groceries and small things that amounted to five or ten or fifteen dollars that we would use around the house or even tools.

Q. Do you have any idea how much money you spent for buying [560] parts in the year 1952 to 1953? A. No, I don't.

Q. You bought them generally from two spots down at Portland, is that right? A. Yes.

Q. Now, when you would cash these checks would your wife cash them or did you cash them?

A. Sometimes either one of us cashed them and most of the time it would be her.

Q. Where did you cash these checks?

A. Those checks would be cashed at one or two places in the community that could cash checks at all, and that would be either the recreation place or the bank or the grocery store.

Q. Now, when you gave your wife a check and told her to go ahead and cash it and keep the cash,

(Testimony of Joe Palermo.)

did you mark it down in the books and records that you kept it?

A. Well, I had thought that I had.

Q. You had thought that you had?

A. Yes.

Q. Now, is there any question, Mr. Palermo, about the fact that you gave Mr. Bates the figures taken out of your books and records; you gave those to him? A. I gave them to him.

Q. And there is no question that Mr. Bates reported what [561] gross earnings you made from the figures you gave to him?

A. That is correct.

Q. And it is correct, I take it, that the income tax return was made up accordingly from the information that you gave him?

A. That's right.

Q. Now, let us get to the year 1954, which is not one of the indictment years, but this morning Mr. Brown was asked if he made out your income tax and he said that he did and that he went over it with you very carefully. Did you go over it with him very carefully?

A. I was there when he showed me every item in the book and—in the book and what he was doing.

Q. And, yet, isn't it a fact that you had \$4,-960.67 that you did not tell Mr. Brown about in the year 1954?

A. I didn't know it at that time.

Q. You know it now? A. I know it now.

Q. And, yet, you gave him all the books and

(Testimony of Joe Palermo.)

records you had for the year 1954? A. I did.

Q. And you gave him your sales and all other items that you had? A. That is correct.

Q. But you had not entered on your books, then, a number of [562] checks totaling approximately \$5,000.00, is that right? A. It could be right.

Q. Do you have any idea where the deposit slips are that you don't account for here; were they sent some place or where are they?

A. Those that are not here now do you mean?

Q. Yes, correct.

A. I wouldn't know where they are at unless they could be lost in the move.

Q. Now, when you started your bookkeeping system that you had in Exhibits 98, 99 and 100, I believe you stated that you worked at it nights and Sundays and whenever you had a chance, and wrote down the checks? A. That is correct.

Q. Now, when you got a check did you write who it was from, how much it was for, and what it was for in your book?

A. That is the way I entered it.

Q. Yes. Now, during those four years your testimony shows that there is—I think that there is 235 checks that you received during the years 1950 through 1953, and I also believe that the summary showed that there is a total of 99 checks not reported. Does that sound about right to you?

A. After hearing the evidence I believe that is correct.

Q. All right, then, that appears that a correct

(Testimony of Joe Palermo.)

statement [563] would be that out of every three checks you would not report a little less than two of them, is that correct, 99 out of 235?

A. Well, that I wouldn't know.

Q. Well, is there any way that you kept track, did you give receipts to these fellows for the checks that you did not record in your books? .

A. How was that again?

Q. Did you give receipts for the checks not recorded in your books?

A. I don't believe I did.

Q. You didn't believe that you did. Well, you just cashed the checks and didn't report it so far as your books and records were concerned. I believe you testified that you saw Mr. Bates in 1948 first. Actually, it was 1949, wasn't it; didn't he make out your 1948 return? A. That's right.

Q. And you saw him for the first time in 1949?

A. That he started making out my taxes, yes.

Q. Mr. Bates entered in your records exactly what you gave him, is that right?

A. He did. I would believe so. I never went over them so I wouldn't know exactly but I would presume that he did.

Q. Well, you have listened to the testimony and it was within a penny, isn't it there? [564]

A. Yes.

Q. Now, how did you account for, say \$60,000.00 cash in the bank or actually as much cash in the bank many times as you could make money in two

(Testimony of Joe Palermo.)

years, did it ever occur to you that you had an excess amount of cash in the bank?

A. I guess I didn't realize it.

Q. Did you ever talk to one of the Internal Revenue agents and tell him that you kept track of your profit by the size of your bank account; do you remember that conversation that you had with one of these revenue agents here that you kept track of your profit by the size of your bank account; is that a correct statement?

A. I believe the correct statement to my knowledge would have been the books with the bank account.

Q. I am asking you if you told him or one of the agents that you could always figure how much profit you were making by the size of your bank account; is that a correct statement?

A. I wouldn't know. I don't know that.

Q. There is no question, Mr. Palermo, is there, that your books and records which are Defendant's Exhibits 98, 99 and 100, do not show the true picture of your gross receipts during the years of 1949 through 1953?

A. That's right.

Q. There is no question that you left off a great number of [565] checks during those years?

A. That is right.

Q. Mr. Palermo, you received all of your income tax returns for years of 1950 through 1953 from Mr. Bates?

A. Yes, I did.

Q. And did you mail them yourself?

A. No.

(Testimony of Joe Palermo.)

Q. Who mailed them? A. Mr. Bates.

Q. But they were mailed somewhere in your area down there?

A. I would think so. Mr. Bates mailed them.

Q. And those income tax returns were made up from the information that you gave him?

A. That is correct.

Mr. Bantz: May I have 86, 87, 88 and 89, please, Mr. Taylor?

The Clerk: 86 is down there.

Mr. Bantz: All right, thank you. And can I have 101, which I believe is the income tax return for 1954?

The Clerk: 102.

Q. Mr. Palermo, handing you Plaintiff's Exhibit 102 for Identification, just examine that a moment, please. Is that your signature? A. That is.

Q. Is that your wife's signature? [566]

A. That is.

Q. And is that the income tax of yours for the year of 1954? A. It is.

Q. Was that made by Mr. Brown at your request? A. That is right.

Mr. Bantz: Your Honor, I am going to offer Plaintiff's Exhibit 102 into evidence at this time.

Mr. Moore: No objection.

The Court: It will be admitted.

(Whereupon, said income tax return was admitted into evidence as Plaintiff's Exhibit No. 102.)

(Testimony of Joe Palermo.)

Q. Mr. Palermo, in 1950, reading from Plaintiff's Exhibit 86, which is a summary of receipts for 1950, now it states here the amount of your gross receipts were \$89,221.35, and you recorded \$66,090.94? A. That's right.

Q. And you didn't record \$16,873.70?

A. I believe that would be correct.

Q. Now, for the year 1951 it shows your gross receipts, and this is non-income and unidentified income included in the regular, at \$121,079.70. You recorded \$98,178.22 and didn't record \$21,951.48, is that right?

A. I believe that would be correct. [567]

Q. And also in 1951 you received 54 checks and did not record 25 of them, is that right?

A. That is right.

Q. And for the year 1950 I believe you received 53 checks and did not record 16 of them, is that correct? A. How many?

Q. No, that is wrong. You received 62 during the year, is that correct?

A. Yes, that is right.

Q. And you did not record 25 of them?

A. That is right.

Q. Now, in the year 1952 you apparently made \$131,750.59 in gross receipts, and you recorded \$97,952.27, is that right? A. That is correct.

Q. And you did not record \$29,458.50, is that correct, \$29,458.50? A. That is correct.

Q. And it shows here that you got a total of 67 checks of income and you did not report 39 of them,

(Testimony of Joe Palermo.)

is that right? A. That is right.

Q. And there is nonincome checks or unidentified, you received 13 of them and you did not record in the book any of them, is that right?

A. That is right.

Q. Now, for the year 1953 it shows that you made \$124,068.45 [568] of gross receipts, is that correct? A. That is correct.

Q. And you reported in your books and records \$102,901.73? A. That is correct.

Q. And you did not record \$13,964.16?

A. That is correct. That is right.

Q. And you received a total of 70 checks during the year 1953, is that right?

A. That is right.

Q. And you did not record in your books and records 28? A. That is right.

Q. Is there any question in your mind that those figures are not correct? A. There is not.

Q. During the year 1948 you received a total of 27 checks, reported 7 and did not report 20, is that correct, for the year 1948?

A. That is right.

Q. And in 1949 you received a total of 42 checks and you reported 18 of them and did not report 24 of them, is that correct? A. That is correct.

Mr. Bantz: May I have 102, I believe it is. No, 101 that green one right there.

The Clerk: 103. [569]

Q. Now, handing you Plaintiff's Exhibit 103 for Identification, I believe it was stated this morn-

(Testimony of Joe Palermo.)

ing with your accountant that the figure you reported was \$107,751.78, which was on your income tax return which was just admitted in evidence?

A. That is right.

Q. And then I asked if it appeared that it is correct that there were a number of checks—1, 2, 3, 4, 5, 6, 7, 8, 20, 21—a total of 21 which amounted to \$4,960.67 which did not show on your income tax return for 1951; is that a correct statement?

A. I believe that would be correct.

Q. And those 21 checks were not recorded in your books and records and not deposited in the bank account?

A. Well, I don't know about depositing.

Q. But they weren't recorded. When you bought that stock in the Idaho mining company there did you pay for it in cash or by check?

A. By check.

Q. By check? A. Yes.

Mr. Bantz: May I have Plaintiff's Exhibit 66, Mr. Taylor?

Q. Handing you Plaintiff's Exhibit 66, Mr. Palermo, I am assuming that you have gone over this. This purports to be a net worth statement of yours for the years 1949 [570] through 1953, and your net worth in 1949 it states is 27—pardon me, your net worth is \$19,208.80, is that correct for 1949? A. Correct.

Q. And that is beginning 1949. At the end of 1949 is \$26,811.07. In 1950 it is \$57,211.31. At the end of 1951 it is \$93,933.46, is that correct?

(Testimony of Joe Palermo.)

A. That is correct, at the end of 1951.

Q. At the end of 1952 it is \$119,360.41?

A. Correct.

Q. And now the only thing that is wrong with that, there isn't the \$10,000.00 deposit at the Bank of Stevenson, and that figure should be \$129,360.00, is that correct? A. That would be correct.

Q. And the total of your net worth for 1953 is \$138,084.44, is that correct?

A. That is correct.

Q. And there is no question he made this computation to the best of his ability from this?

A. That is right.

Q. And that is a true picture of your net worth growth through the years 1949 through 1953, is that right? A. That's right.

Q. Now Mr. Palermo, you have stated that you bought a hotel at Hood River in 1954. What is the purchase price of that? [571]

A. I believe that the purchase—I believe that the purchase price of that was \$106,000.00.

Q. And how much cash did you put down?

A. The cash I don't remember because I traded the houses in on that.

Q. All of your rental houses?

A. All except one where I have my shop and the other things and so forth which I have a little house for there.

Q. Didn't you put up some \$30,000.00 in cash also?

(Testimony of Joe Palermo.)

A. I don't remember the amount. I didn't remember that.

Q. That doesn't sound familiar, \$30,000.00?

A. I would have to stop and figure that.

Q. Now, you bought that hotel and your wife stated you were the man in charge of the finances of that hotel, is that correct?

A. How was that again, please?

Q. Your wife stated that you were in charge of the hotel insofar as the finances were concerned, is that correct?

A. That's right.

Q. You made the transactions yourself, is that right?

A. I did.

Q. You contacted the seller and made a regular real estate transaction concerning this hotel?

A. I contacted the buyer or the owner.

Q. The owner? [572]

A. Yes.

Q. All right. And you handled the finances of it after you purchased it, is that correct?

A. Yes, that is correct.

Q. You put the money in the bank, did you; you handled the books and records of that hotel, did you?

A. No, I didn't.

Q. Didn't you have an accountant at Hood River that did bookkeeping for you?

A. He did.

Q. You did the purchasing and other business transactions to sell that hotel, did you?

A. No.

Q. Well, your wife stated that you were the

(Testimony of Joe Palermo.)

manager of that hotel insofar as the finances were concerned, or did you do anything?

A. Not too much.

Q. And you lost a little bit of money on it, is that right? A. I did.

Q. And I believe you bought it and you didn't know whether it lost money or made money?

A. No, I know it made money.

Q. At the time you purchased it you knew that it was making money? A. Yes. [573]

Q. Actually, Mr. Palermo, you are a pretty astute business man, aren't you?

A. After the evidence I wouldn't think so.

Q. Well, do you know of any people in the logging business that have sixty to eighty thousand dollars cash in the bank each year?

A. I haven't checked or asked anyone for that information.

Q. No. It took a lot of labor and management to get sixty or seventy thousand dollars cash, didn't it?

A. It took a lot of work.

Q. You bought the hotel with the same assumption that you logged logs, didn't you, that you were going to make money with it?

A. Well, it was my intention.

Q. And it has ended up that you did not?

A. No, I did not.

Q. And you sold it? A. Yes.

Q. How much did you sell it for?

A. It was just sold May 1st and he sold it and I don't know how much I lost on it——

(Testimony of Joe Palermo.)

The Court: That wasn't the question.

Q. How much did you sell it for, Mr. Palermo, what was the selling price?

A. The selling price was a trade for a motel valued at [574] \$25,000.00, plus the balance in cash, which I don't remember whether it was \$5,000.00 or \$5,500.00.

Q. And that was for your equity?

A. That is correct.

Q. And now you are in the motel business now, I take it? A. No, I sold that, too.

Q. You sold that? A. Yes.

Q. Did you get paid for that?

A. No, I made another trade.

Q. What do you own now out of this hotel?

A. Out of the hotel?

Q. Well, you sold it for cash, plus some motel?

A. Well, it finally got down now to where I traded it for a ranch at The Dalles, Oregon.

Q. And I take it then that you understood real estate transactions, you can buy and sell at least, is that right? A. Well, I wouldn't say that.

Q. You know the difference between assets and liabilities, too, I take it? A. I am learning.

Q. And you knew it from 1950 through 1953, didn't you?

A. I didn't know too much about it.

Q. Well, you knew that assets mean that you had some money in your pocket or you got some money coming, is that right? [575]

(Testimony of Joe Palermo.)

A. Well, I knew that it was supposed to have been that I had it.

Q. All right. You knew enough, Mr. Palermo, about bookkeeping that you had enough sense to put down here when a man paid you \$2,875 in his name and what it was for? A. I did that.

Q. You did that? A. Yes.

Q. And you knew when somebody owed you \$2,875 that you placed it on the ledger as a liability until he had paid the bill?

A. Asan expense, yes.

Q. And you knew enough to keep track of all the money you had coming to you, didn't you?

A. I believe I did.

Q. Now, another thing about your memory, you knew enough in your income tax returns to take losses that you incurred in certain years, didn't you, you could remember the losses that you incurred during the years, couldn't you?

A. I believe so.

Q. And you turned them into your income tax--the man that made out your income tax return, didn't you? A. I did.

Q. But you couldn't remember how many checks that you didn't record in your books and records?

A. No, I couldn't. [576]

Q. All right. Just reviewing a few of these checks. That is Plaintiff's Exhibit 36. Here is a check in the amount of \$127.00 made out to Joe Palermo and indorsed by you at the Recreation

(Testimony of Joe Palermo.)

Center. That is at the Recreation Center at White Salmon, is that right? A. That is correct.

Q. Now, here is a check from Plaintiff's Exhibit 76 in the amount of \$170.16, Larsen's Lunch, is that right, that has been cashed? A. Yes.

Q. And the next check, Recreation Center, in the amount of \$173.36, is that right?

A. That's right.

Q. And the next check, Larsen's Lunch——

A. That is not my check, this one here.

Q. Well, it is made payable to Joe Palermo, September 9, 1952, for \$173.36. It has got your name, Joe Palermo.

A. I am sorry, yes, you had that covered up and I couldn't see it.

Q. And here is a check cashed at the Security State Bank for Larsen's Lunch, your signature in the amount of \$255.73, is that correct?

A. That is correct.

Q. Now, here is another one from Larsen's Lunch signed by you for \$144.88. Here is another one, Larsen's Lunch, signed by you in the amount of \$263.90, and the last one is the [577] Central Food Market, \$63.73. Now, reading from Plaintiff's Exhibit 75, here is a check indorsed to Larsen's Lunch, your signature, \$159.73. Now, another one here from Plaintiff's Exhibit 35 at the Recreation Center in the sum of \$186.39. Now, Mr. Palermo, I am just picking these up, these checks that are cashed there amount to a considerable amount of money. Of those checks some of them are recorded

(Testimony of Joe Palermo.)

and some of them are not recorded. Did you have any system when you went and cashed a check that you recorded it then or does that mean when you cashed it that generally you did not record it?

A. I rightfully couldn't say. I did think that it was put in the book. I presume that it would be put in the book.

Q. You left off out of 235 checks, 99 checks you did not put in your books, that is 136 checks that you put in your book. You presumed, I take it from your testimony, that you put everything in the book, but you forgot to put in the 99. Now, that is your testimony, is that correct? A. That is correct.

Q. In the Plaintiff's Exhibit 88, which is a summary for the year 1952, I want to just show you here from the Mt. Adams Loggers Association in 1952 you received 14 checks in the amount of \$3,-686.95, is that right? A. Yes.

Q. And you recorded in your book none, is that correct; in [578] other words, 14 were not recorded?

A. That is in the book?

Q. Not recorded in the book. You deposited 12 of the 14 checks but you did not record 14 of them in your book. Is there any reason why you particularly picked on the Mt. Adams Loggers Association to not record the checks on your books and records here?

A. Well, I don't know, between the bank and the books I figured that they were recorded in one or the other.

Q. Well, you reported for your income tax just

(Testimony of Joe Palermo.)

what was in your books that you called receipts, is that right? A. That is right, yes.

Q. And when you did not record it you did not report it on your income tax?

A. That is right, I did not.

Q. And for the year 1952 you did not record any of them in your book? A. That is right.

Q. Therefore, you did not report any of them on your income tax, is that right?

A. I presume that's right.

Q. All right. Mr. Palermo, there is no question in your mind at this date that you owe the Government some money for income earned during the years 1950 through 1953, is that right? [579]

A. Yes.

Q. And have you had an opportunity to go over those figures with your accountant Mr. Brown, that we discussed here in open court?

A. That's right.

Q. And they are correct as far as you are concerned? A. Yes, they are.

Q. I am talking about recomputation of tax due on your gross receipts; you feel that is correct?

A. That is right.

Q. You feel that is correct?

A. Yes, that's right.

Mr. Bantz: Just a second, your Honor, I will try and hurry.

Q. Mr. Palermo, getting back to who controls your check books, I want to get this straight, you wrote in your books all of the stuff yourself?

(Testimony of Joe Palermo.)

A. I did.

Q. That included the receipt of the money you spent, that's right, your wife had nothing to do with it?

A. That's right.

Q. The checks came into your house and you controlled the checks when you got them?

A. I did.

Q. And you had your wife do the purchasing in Portland when you [580] bought parts?

A. That's right.

Q. Did you make out your own deposits or did your wife do that for you?

A. I sometimes made them and other times I would lay checks out for her to make them.

Q. And you kept track of the checks that you received; as much as you kept track of them, you kept track of them in Exhibits 98, 99 and 100?

A. That is correct.

Mr. Bantz: That is all I have.

Mr. Moore: Do you want me to go ahead with the redirect examination, your Honor?

The Court: Yes.

Redirect Examination

By Mr. Moore:

Q. With reference to the hotel sale, Mr. Palermo, it is true, is it not, that you got a piece of property in addition to that motel?

A. Would you repeat that again, please?

Q. On the sale of the hotel, it is true, is it not,

(Testimony of Joe Palermo.)

that you got another piece of property in addition to the motel? A. I did.

Q. Didn't you?

A. I did. I am sorry. [581]

Q. And what was that?

A. It was a piece of property in Alberta, Canada, that this party had in conjunction with the motel that he put in for the price, too, for a price of \$8,000.00 I figured that.

Q. It was put in at \$8,000.00 and the motel was \$25,000.00? A. That is correct.

Q. And, then, you received some cash?

A. Yes.

Q. And did you personally get any of the cash?

A. It all went out for bills.

Q. Do you mean on the sale itself?

A. That's right.

Q. The cost of sale? A. Yes.

Q. When you purchased the hotel if you paid any money in addition to turning in the property when you bought that hotel, how would you have paid that money over, by cash or by check?

A. By check.

Q. Since you bought the motel did you find out what happened to the former owners and operators of the hotel in their operation?

A. The former owner?

Q. Yes.

Mr. Bantz: Your Honor, I think we are getting far [582] afield what happened to the other owner.

(Testimony of Joe Palermo.)

The Court: Well, I should think so unless you mean whether they lost money on it.

Mr. Moore: That is it.

Q. Well, isn't it true that you have learned since that time, since you bought that hotel that the former operators went bankrupt operating it, is that correct?

A. I am sorry, I still don't get the question.

The Court: Well—well, all right, go ahead.

Q. Since you bought the hotel didn't you learn afterwards that the people who had operated it beforehand had gone bankrupt in its operation?

A. Oh, yes. Yes.

Q. With reference to the question that Mr. Bantz asked you on the money, your maintaining a record of the money due you, I believe that Mr. Ackley testified that he still owes you some money, is that correct?

A. That is correct.

Q. And how much does he owe you?

A. I rightfully don't remember.

Q. Is it anywhere in Exhibits 98, 99 or 100, in these exhibits?

A. I believe it is in there, yes.

Q. It is in there some place?

A. Yes, I believe it is.

Q. Do you know when he went out of [583] business?

A. I believe it was '53 when he went out of business.

Q. And you believe that somewhere in the 1953 book that there will be a record of how much he

(Testimony of Joe Palermo.)

owed you, is that correct? A. I believe so.

Q. What about the Jackknife Mill, Mr. Coleman, does he owe you some money? A. He did.

Q. Did you ever get that money?

A. I never did.

Q. Do you know how much it was?

A. Pardon?

Q. Do you know how much it amounted to?

A. It amounted to seven thousand and some dollars.

Q. Is that in your books here?

A. I believe it is.

Q. In one of these Exhibits 98, 99 or 100?

A. Yes, I believe it is.

Q. Any of the rest of these mills owe you money, the mills that are no longer operating?

A. There have been some.

Q. And if they owe you money would that be reflected in any of these three Exhibits 98, 99 and 100?

A. I believe that it would be but I am not being sure.

Q. With reference to the expenses, I don't know if this is [584] or not but your record of expenses that you used for income tax returns for things other than labor or stumpage would not be in Exhibits 98, 99 and 100, would they, and the record that you used I believe you said was——

A. Receipts.

Q. Receipts for bills that you had paid?

A. Yes, I believe that is correct.

(Testimony of Joe Palermo.)

Q. You did not use cancelled checks?

A. Yes.

Q. Since you started in business in the fall of 1947 have you attempted to conceal or hide any of the material things that you have acquired such as bank deposits, the logging equipment, your houses, the hotel, or anything else?

A. I did not, no.

Mr. Bantz: Your Honor, I am going to object, we are back on direct examination again.

The Court: I beg your pardon?

Mr. Bantz: We are back on direct examination again, and this is not proper redirect.

The Court: I think that there was some inference. I will overrule the objection.

Mr. Moore: Did you answer that question?

A. I believe I said that I did not.

Mr. Moore: That is all.

The Court: Do you have any other [585] questions?

Mr. Bantz: I have just two.

Recross-Examination

By Mr. Bantz:

Q. I take it you lost money on your real estate operations from 1954 to date, is that correct?

A. That is correct.

Q. But during the years 1950 through 1953 you never lost any money at anything, did you?

A. Better years.

Q. Better years?

A. Yes.

(Testimony of Joe Palermo.)

Q. Now, I will ask you another question: You knew how much money people owed you apparently from your books and records, is that right?

A. That is right.

Q. Well, how do you figure out what they owe you when you don't record it in your books and records?

A. That I cannot answer.

Mr. Bantz: That is all.

Mr. Moore: That is all.

The Court: That is all, Mr. Palermo.

(Witness excused.)

Mr. Moore: If we rest now, your Honor, do you want Mr. Bantz to go ahead with rebuttal?

The Court: It depends upon how much he [586] has.

Mr. Bantz: Now, may I have Exhibit 102.

The Court: What I have in mind would be the jury would like to finish the testimony without running too late tonight, and so the jury can have all the evidence in today and we will have the argument and instructions left for tomorrow.

Mr. Bantz: I hope to do it in five minutes.

Mr. Moore: All right, I will rest.

The Court: All right the defendant rests?

Mr. Moore: Yes.

Mr. Bantz: You may take the stand, Mr. Simonson.

PAUL SIMONSON

recalled as a witness by the Government, on rebuttal, was examined and testified as follows:

Direct Examination

By Mr. Bantz:

Q. Mr. Simonson, handing you Plaintiff's Exhibit 103, will you please examine that. Is that an analysis of receipts you made for 1954?

A. It is.

Q. And you checked the records concerning what is on this paper, is that right?

A. I have checked the records concerning what is on this paper, yes.

Q. What does this purport to be, just briefly?

A. Going over the 1954 income tax return, Mr. Brown supplied [587] us figures on the computation of the receipts per the return which included the deposits to the bank, the National Bank of Commerce at White Salmon, plus \$350.00 as to the value of the Dodge truck which he received from the logs, to get the receipts per the return and in addition to those we have found that there was a \$1,000.00 deposit to the Hood River Bank which was for payment for logs.

Mr. Moore: Your Honor, I believe he is testifying from something that is not in evidence yet.

The Court: Is that 103?

Mr. Bantz: Yes. All right, I will do it the long way, your Honor. It is a summary for 1954.

The Court: I don't believe 103 is in evidence yet.

Q. Mr. Simonson, did you check the records

(Testimony of Paul Simonson.)

that are in evidence to see as to the records if there were any checks or sums of money in the bank that were not recorded in his books and records for 1954? A. There are none in evidence.

Q. When did you check these?

A. I checked these during the course of the investigation. I examined cancelled checks of people who he had done business with in 1954.

Q. And what did you find during that investigation?

A. I found that there were checks which were not deposited in [588] the bank account and therefore would be additional receipts to add to the bank account, to the bank deposits as determined by Mr. Brown.

Q. Now, did you make a list or have you made a list of those checks? A. I have, sir.

Q. And is the list what I have before me?

A. That is correct.

Q. And that is for the year of 1954?

A. 1954 is correct, yes.

Q. And that is this list? A. Yes.

Mr. Bantz: I am going to offer Plaintiff's 103 into evidence, your Honor——

The Court: Did you see that, Mr. Moore?

Mr. Bantz: It is only for the purpose of showing similar acts and transactions for 1954 as in the case for 1948 and 1949 of nonreporting of checks.

Mr. Moore: We have no reason to know whether these are correct or not, your Honor.

The Court: Well, I think it is not the best evidence.

(Testimony of Paul Simonson.)

Mr. Moore: No, I don't think it is.

The Court: It is at least not the best evidence where we can have the checks here and examine them. I will sustain the objection. [589]

Mr. Bantz: Your Honor, I again there in my offer I think that maybe I should state the fact that Mr. Palermo himself stated that the figure was correct and that the checks weren't entered in his books and I think his testimony together with that of Mr. Simonson would make the exhibit admissible.

The Court: I don't think you can admit the exhibit on the admission. The admission would stand for what it is worth but I don't think it would lay a foundation for the introduction of the exhibit.

Mr. Bantz: You may examine.

Mr. Moore: No questions.

The Court: That is all, Mr. Simonson. I think I will have the jury step out just a moment.

Mr. Bantz: I am going to rest, your Honor.

The Court: Well, I just wanted to discuss something with you briefly here. It won't be long.

(Whereupon, the following proceedings occurred in the absence of the jury:)

The Court: Are you ready to rest, then, Mr. Bantz?

Mr. Bantz: I am, your Honor.

The Court: What I had in mind, it always seems to me that it is highly desirable, if we can, to have the argument all in one session of court. I don't like to have the situation of breaking into

the lunch hour and coming back and [590] start arguing afterwards. It is advantageous to one or the other of counsel. I don't think it is quite so important to have the Court's instructions at the same time but I think it would be perhaps able to button it all up before lunch, and of course whether we can finish in the forenoon session depends upon the time you wish to have for argument and the time you would begin.

Mr. Moore: My argument would depend upon his.

The Court: That is right.

Mr. Bantz: Well, your Honor, I want to say that I would like to have forty five minutes, if I may. That is going to be one and one-half hours of argument then. Could we start at nine-thirty?

The Court: We could start at nine-thirty or we could start at ten and I could give my instructions after lunch. I know in a case of this kind counsel have plenty to do to get their case on and I don't like to start too early in the morning, and it does take you time to prepare your argument, and there are so many exhibits here. What would you prefer, Mr. Moore?

Mr. Moore: Frankly, your Honor, I would be willing to go ahead and start at 9:30 and as Mr. Bantz says each side will take forty-five minutes.

The Court: What we will do is give you forty-five minutes on each side, and as Judge Webster used to say, don't [591] feel under any moral obligation to use it all. And I think we should be here ten minutes and finish and I can give you some

idea of my proposed instructions and you will have some idea of what I would instruct. The real point in issue is guilty knowledge or lack of intent——

Mr. Moore: Along that line, your Honor, would it be all right if I took three minutes this afternoon just to keep the record straight and make a motion, rather than take up the time tomorrow morning on that?

The Court: Yes, you may do that. Yes, to preserve your record you may make your motion.

Mr. Moore: Comes now the defendant at the conclusion of the presentation of all of the evidence and asks the Court to direct a verdict of acquittal as to all four counts.

This motion is based upon the ground that all of the evidence at the present time does not exclude every reasonable hypothesis other than that of guilt, and that the question of intent being the basic question to be presented in this case, that the evidence is as consistent with innocence as with guilt and that under the rule of *Elwert vs. United States*, 231 Federal 2nd 928, the court should direct a verdict of not guilty as to each of the four counts. That the question of intent is one of the basic issues of this case and there is no independent evidence other than the understatement of income for the years as proof of intent, and that therefore the [592] Government has failed to sustain its burden as a matter of law.

The Court: The motion will be denied and you can bring in the jury then.

(Whereupon, the following proceedings occurred in the presence of the jury:)

The Court: Now, ladies and gentlemen of the jury: The evidence has all been submitted and both sides have rested, and so the only thing that remains in this trial is the closing argument of counsel and the Court's instructions to the jury on the law that applies to this particular case. And so that we may finish before lunch tomorrow we are going to start a half hour earlier. You will come back at nine-thirty and hear argument and the Court will instruct you, and I hope to get through by lunch time. And please remember don't discuss this case among yourselves or with anyone else until you have retired to consider your verdict in the jury room, and don't discuss this case with any outsider. Now, when you come back tomorrow and you go and consider your verdict you will be kept together in the charge of the bailiff and if you take your meals, and while it very rarely happens you may be kept overnight. If you agree before that and notify the bailiff you will go back into court and report your verdict but if you have difficulty it is possible that you remain overnight. I mention that if you want to stick a toothbrush in your pocket [593] and bid your family goodbye and prepare for a long session. Court will adjourn until nine-thirty tomorrow morning.

July 30, 1957—9:30 A.M.

The Court: All right, proceed.

PLAINTIFF'S OPENING ARGUMENT

Mr. Bantz: Your Honor, Ladies and Gentlemen of the Jury, and Mr. Moore: At this time the plaintiff, and I represent the Government, has the opportunity to discuss its position relative to the case concerning the evidence that you heard, and I want to start out by saying that what I say is not evidence. It is merely my version of it. You have to make up your mind when you go to the jury room.

I will talk first. Mr. Moore, then, has a chance to talk and then I have the opportunity to rebut and close.

You have been here now a week, I believe, today and you have heard the evidence. All of us have a particular job during one of these trials. I represent the United States and I have to put forward the suit of the United States and prove a case. And this is a criminal trial and I must prove beyond a reasonable doubt that the defendant is guilty, and if I don't prove it through the evidence we have submitted you are to find the defendant not guilty; and if we have proved it and you so find after proper deliberation, we ask that the man is found guilty. [594]

Mr. Moore has the job of defending the defendant. Each has his own job. The Judge runs the courtroom. He makes up the rules of procedure—I mean he enforces the rules of procedure and rules on the

law, and will instruct you and I and Mr. Moore on the law that is to be followed in the case. Then, it comes your duty, and that is the duty of making a deliberation in your mind of all of the evidence that has been presented in this courtroom, and nothing else. You don't have to listen to anything else, pay any attention to anything else but the evidence that has been produced before you in this court.

The evidence has been brought forth by the plaintiff and it is a case involving what we commonly call income tax evasion, as you are well aware of now. This is really a simple case. It is not an involved one where we have all kinds of argument. In fact, I might say it really has been a pleasure to try this case where we have had as little interruption and have made as much speed.

But I want to say about income tax evasion cases, they are a secretive case. This is no crime of violence where we are charging some fellow with something of that type. You don't go around telling anybody what you are doing in the committing of income tax evasion. I have found and I think you have found that it is a crime that is within an individual, what his intent is, and that is actually the crux of the case [595] here. And what I am going to do, I am going to discuss with you what I have felt that the evidence has shown during the course of the trial as to the defendant's intent during the years of 1950 through 1953; and I want to talk about some of the other years, too, but they are not in the indictment, and I will mention that; that anything I say about the years 1948 and 1949 and 1954

that were testified to, he is not being tried for those years. I have put in certain evidence through witnesses concerning those years, and I think you will recall that I asked that it be admitted for the limited purpose of showing similar transactions and design in previous years and later years, and I think that the Court will instruct you on that, that that is the only purpose and no part of the case here.

Getting into the income tax evasion, I think you have sat here for five days and you have listened and you have found that it is not a crime that you go and broadcast out to anybody. I think you will observe that in this case.

They have five or six character witnesses who are excellent men. I have no dispute with them. I have no doubt that the character and reputation of Mr. Palermo in White Salmon is excellent. I have no dispute with it and I think that is always the way it is. It should be that way. But remember all of the questions that I asked them: Did you know that he had understated his gross receipts during the [596] years 1950 through 1953? No, they didn't know it. I grant they didn't know and they come in and testify; and I want to be fair about it, he had a good reputation down there but also the reputation is not within him and it isn't what he had done there in the past five or six years. It is what the public knows about him, what the public sees.

Now, I want to state in this particular case, and I don't think there is any question about it, that he filed his income tax return. It is admitted and we

got it in evidence and he stated it was his, and Mr. Brown stated it was his and that the figures were apparently all right. And he mailed them and sent them into Tacoma. There is no question that the testimony shows it and he admits it and the accountant does, and I think we have proved by the witnesses how much he owes and I think it is in there for the years 1950 through 1953, and there is no question about it being admitted.

There is no question but that he understated his gross receipts. He admits it. The accountant admits it. We proved it through separate evidence in the trial. There is no question but that the accountant made up the returns accounting exactly for what he submitted to them in making up the returns.

I want to recall before we go much further, evidence showing a little bit of intent. You remember Mr. Bates, the [597] accountant from White Salmon, testified he received certain things from Mr. Palermo regarding his income tax returns, which were his gross receipts for those years. They were written down. He only missed it one penny out of nearly \$400,000.00. We can't get much closer. He prepared them from the figures that Mr. Palermo turned into him. Mr. Brown prepared one in 1954, from the figures that he got from him. In 1948 and 1949 they were prepared the same way and each year there was an understatement, but there is no question but what Mr. Palermo knew what he was doing, and I am going to go over it and show you why I think so. That is my version of it, and I am

assuming that Mr. Moore will have a different version.

To begin with, we didn't have a net worth statement in this case for the year 1948 but in evidence in Plaintiff's Exhibit 66 you will find that Mr. Palermo states in there that he had a net worth in 1949 of \$19,208.00 and at the end of 1953 I think Plaintiff's Exhibit 66 will show that he had a net worth of \$148,084.44. Now, the exhibit of course shows \$138,000.00 but Mr. Brown states that there was an additional \$10,000.00 in the Stevenson State Bank that wasn't accounted for, and I believe Mr. Simonson states that also, and so it would be \$148,000.00 that he picked up in about five years.

Now, that is actually a net gain of around \$128,000.00.

You are going to have to listen to me for a few moments [598] and so if I have to have a drink of water just bear with me.

Now, I want to talk about what 1948 shows just a minute. When you go into the jury room review the income tax return for 1948. It is not in the indictment but I am going to start right at the very start that we are in here. The return shows that he lost \$6,040.00 on his income tax return for the year 1948. In 1949 it shows that he made \$1,824.00. In 1950 it shows that he made \$4,553.00. But just look at this, and I think here is where we are starting for 1948. In the three years on from 1948 to 1950 he made a total net gain of profit of about \$300.00, about \$300.00 difference. He lost \$6,000.00 and he made \$1,800.00 and \$4,500.00. He made \$300.00 in

1948, 1949 and 1950 in accordance with the returns. But let us take a little look here. But in 1948 he did not report \$7,454.75 of income. In 1949 he did not report \$10,705.97. In 1950 he did not report \$16,873.70. He shows on his income tax return he made \$300.00, in those three years, but you have got to put down that he also took in \$35,035.15 that he did not tell anybody about. It looks to me like he made more than \$300.00. He would make you believe that in the first three years he made no money.

He had to live and he had to participate in the community activities and raise a family and yet it shows he only made \$300.00 when he had \$35,000.00 to deal with and put in the bank and get along with. [599]

I will ask you this: Is it possible to know that you are not evading income tax when you account to the Government for \$300.00 and you admit on the stand when the evidence shows, that you had \$35,000.00 which you did not report?

Let us look at the years of 1951, 1952 and 1953. I want to show you what I believe is a pattern or plan in this particular case. Remember, it is my contention that income tax evasion is a secretive crime. That a man does not broadcast but we have to prove by his actions, by the evidence that is both circumstantial evidence and real evidence that we place in this trial. You are the judge of that evidence. You have to make up your mind. But I want to review what goes on for the next three years. In 1951 Mr. Palermo took in \$120,000.00. I am just going to use round figures and so I will keep it within the thou-

sands. He reported \$98,000, and that means that he did not report, then \$21,900.00.

Now, in 1952 he took in \$127,000.00. He reported \$97,000.00 and he did not report \$29,000.00 of it. In 1953 he took in \$116,000.00. He reported \$102,000.00 and he did not report \$13,900.00. And I want to show you how big this gets. During the years of 1948—I went over those figures with you—but from 1948 through 1953 Mr. Palermo had in his hands \$500,673.17 according to the evidence. He reported on his income tax returns \$401,000.00—\$401,463.88. But during the same time he did not report \$100,-409.29. [600]

Now, I want to show you a little pattern, what goes on. To me it is the crux of the case. If we cannot show that Mr. Palermo wilfully violated the law, I am out of court and you should acquit him, and if you cannot in your own good conscience find that he did it wilfully I ask that you acquit him, but I ask that you review the evidence of what is in this courtroom and then make up your mind and then come in with the proper verdict, one which we feel and I ask you, of guilty. But look here how the pattern runs. 1948—now, I might say you can review them for yourselves but I want to review them here because I feel it is my duty to do it—in 1948 he received approximately 27 checks of various amounts. He did not report 20. In 1949 he received 42 and did not report 24. In 1950 he received 53 and he did not report 16. In 1951 he received 54. He did not report 25. In 1952 he received 67 and he did not report 39. And in 1953 he received 61 and he did not report 19.

He received during those six years that I am talking about here 1948 through 1953—and again I say that between 1950 through '53 are the indictment years but I want to show the similarity through that time and the other years—he received 235 checks and he did not report 99 of them.

Now, I want to go on to 1954. Mr. Brown testified that he made out his income tax for the year 1954. They went over [601] it carefully. I think that the testimony was that they spent considerable time on it. And yet Mr. Palermo with his own accountant after he changed from Mr. Bates, who he felt hadn't properly done it, apparently, and after they had looked the matter over carefully, I asked him about the 21 checks that were not reported in 1954, totaling \$4,960.67, which he didn't even account to his own account for after he had been notified of the investigation of this case.

Now, I want to take up a minute about the investigation of this case and what I feel about this case. Mr. Palermo has co-operated with us since 1954. I am not going to dispute it. I think that the evidence shows us that he told us about it, and our own man tells us that. But the crimes were committed in 1950, 1951, 1952, and 1953. What he does now to change it has nothing to do with the crime he committed in those four years, but yet it appears that he did not change too much in the year 1954, except on a little lesser scale. I think it is important that you remember the whole period of the scheme that Mr. Palermo apparently had to evade his income tax.

One of these cases are always hard when we start out and come to the end of it where you have to make up your mind as to what the facts show, the evidence, and we don't ask that you do another thing but review the evidence and make up your mind as to the intent of this defendant from the evidence that [602] has been adduced in this trial. I think that you can start back with 1948, through 1954, that we have talked about. Each year sit down with what happened, because here was the testimony, as I recall it. Mrs. Palermo was asked who took care of the books, what happened. She puts all the checks in one place and he came in and got them and went to his room and took care of them. What was Mr. Palermo's testimony? He was the sole responsible man for the checks. Apparently 235 of them came in and 99 of them did not get into the records, and yet he takes the stand and wants you to believe that he went to his room each night for the six years that he was working on his books, wrote down all checks that he had received, and yet 99 of them, of the 235 didn't get in there. And he says that he had no intention of evading anything. Mr. Palermo had absolute control over every check apparently that came into his household and yet the checks were cashed by his wife and he testified he told her to cash them and if he cashed them he said he cashed them for bills and at the same time he wrote them down in the book. Well, did he write them down in the book? 99 out of 235 didn't get into the book and if they didn't get into the

book he must have had some reason not to put them in the book and he didn't. Sit in there and look at the evidence yourselves. It is summarized for you piecemeal. Look at the exhibits. There is no other conclusion but that Mr. Palermo [603] deliberately with wilful intent did not place on his gross receipts 99 of the checks that he received in the period of six years of which we are specifically charging him for four years.

I can see no other conclusion but that from the evidence that has been adduced in this trial. But that that is a conclusion which you have to come to when you give proper deliberation to all of the evidence in this trial. Thank you for the time.

Mr. Moore: If the Court please.

The Court: Mr. Moore.

DEFENDANT'S ARGUMENT

Mr. Moore: Ladies and Gentlemen of the Jury, Mr. Bantz: I don't intend to come before you and wave the flag or attempt to get emotional or anything else in my argument. As Mr. Bantz said, he has told us what he thinks this case shows, and it is my turn to tell you what I think that the case shows. And I think if you approach the evidence logically that the only conclusion that you can come to is the conclusion that I have come to and that is that Mr. Palermo is innocent.

However, I don't ask you to go that far. All I ask you to do is find a reasonable doubt, as the judge will define that to you. However, Mr. Bantz said in this

case that the only question is: Did Mr. Palermo evade his taxes and try to. As he told you, we admit that he owes more money [604] than he is indicted for, but it isn't a crime to owe more money than you are indicted for. The crime is attempting to evade taxes and have criminal intent to do so when you make that attempt. If you don't have that, you are not guilty.

In this particular case how are you going to determine whether or not Mr. Palermo is guilty or innocent or whether, to put it down to simple words, did he have criminal intent or not? You can't do it the easy way by saying that Mr. Palermo got on the stand and denied that he had any intent and so I will either think he is telling the truth or I will think he is lying, and I will make my decision on that fact. However, you can't do that, even though presently inclined in Mr. Palermo's favor or presently inclined in the Government's favor, you should consider everything here, and that is as I said, consider it logically.

First of all, what does the Government contend is the evidence proving intent? Mr. Bantz has told you that you can find the intent merely from the understatement of income for the years in question, plus the understatement for 1948, 1949, and 1954. And I submit to you that that cannot be used to determine intent; and, secondly, that standing alone, it is not sufficient to prove intent. It overlooks, for one thing, the basic fact that people make mistakes. The Government's contention is that you can't make a mistake more than once because if you do then

you must not be making a mistake. You [605] must have presumed to intend what you did.

You cannot presume in a case such as this that the under-reporting of income constitutes the crime. The doing of the crime does not present or bring about proof of intent. There has to be something else to prove intent. If you follow the Government's contention you would end up with the fact that the people although they were making mistakes over the years, that it would mean that people were not making mistakes, and that is not human, and that is not the way people are.

Secondly, it is Mr. Bantz' contention that there is a consistent pattern of not reporting. Now, I would ask you to look at Exhibits 86 through 89 to see if there is anything consistent there. There is no consistent omission of a single source of income. There is no consistent omission of certain types of checks. You look at all the years involved. There is nothing consistent about it at all, except that there is money missing, and there is, but it is not a consistent pattern. In other words, they are not all checks under \$500.00 that are not reported and they aren't all cash items because he wasn't doing anything with cash. There are big checks. There are small checks. There are checks from McCormick Lumber Company, and Ackley. There are checks from other companies. Sometimes there are checks from one source of income and sometimes in here there was one or two checks [606] entered from no source of income on that book. And so I say that there is no consist-

ent pattern of under-reporting and there is no plan that we can say that was carried into effect.

Again, Mr. Bantz says, "Well, he didn't tell the truth in 1954 because he didn't advise his accountant of all of the checks." And I think if you will review the evidence, the testimony was that Mr. Brown was going over things carefully with Mr. Palermo but that when he attempted to recap his gross earnings he did not go to Mr. Palermo's bank accounts, and get the deposits, and so the only conclusion to come to on the evidence was that whatever amount was missing was some of this money that wasn't deposited. And I submit to you, Ladies and Gentlemen of the jury, does it sound reasonable that a man discussing with an accountant in 1955 when he is making up his 1954 income tax, knowing that he is being investigated for prior years, having had meetings with Mr. Simonson and Mr. Blankenship, and having hired an accountant and having hired an attorney, that he is then going to wilfully try to hide something from the Internal Revenue Service? That is not logical.

Again, the Government contends that you can find intent from the amount of the omission. That is not correct either because the amount of omission is not material in a tax evasion case. It is whether or not income was omitted or not [607] omitted with the wilful criminal intent to evade taxes. You can be just as guilty in omitting one dollar as you can for omitting \$10,000.00, if the intent is there.

And, again, the Government says, "Well, look at the number of checks that are omitted." Well, you

can do a lot of things with figures. You can take the checks and take the number of checks and see how much income was omitted, but it isn't income that they are giving you. It is checks that are omitted. Look at the exhibits and see how much income was omitted. Under the Government's contention, if I earned \$10,000.00 per year and I got nine checks for one dollar each and if the rest of it were all in one check and in reporting it, and I inadvertently omitted the nine checks, then I would have been omitting approximately 99 per cent of my income, under the Government's approach to this. And that isn't proper.

I think if you will check the evidence you will find that over the years in the indictment—I don't know what figures Mr. Bantz has—but our figures totaled come to \$447,371.00 which Mr. Palermo earned during that period of time, '50 through '53, and he reported \$365,000.00, which means unreported \$82,000.00, or approximately eighteen per cent.

Now, continuing with the Government's contention, there was some claim that there was a concealment of the sources of income because names didn't appear in the books. Now, when [608] they talk about the books they are talking about these two or three books which we put in evidence but those don't constitute all of the books of a taxpayer. Anything that a taxpayer has in his possession constitute his books. Mr. Palermo had those books and he had practically all of his bank statements in his custody, in his possession, showing amounts that he

had deposited in his bank accounts and the checks that he had written, and in addition he had Exhibit 108, I believe it is, which are the deposit slips. Now, those deposit slips are as much a part of Mr. Palermo's records as those books. So, if you look at Exhibit 108 you will find that there could be no concealment of sources of income because every one of his sources of income appear in those exhibits. Not all the checks are in there because he didn't deposit all of his checks but his sources of income are in those, and he had them and he retained them. And in addition to that, Mr. Palermo testified that the first time he met Don Blankenship in the fall of 1954 he was asked as to his sources of income and he advised him of those sources of income, and Mr. Blankenship did not oppose that testimony.

Also, there is some testimony concerning the bank balances at the ends of the years, and Mr. Bantz says that that is proof right there: His bank balance goes up and his net worth goes up, and he should know. Well, take a look at the bank balances. The bank balances fluctuate all the time. [609] The end of the year is merely a bookkeeping point and as was pointed out to you yesterday it goes up to \$80,000.00 and goes down to \$30,000.00 or \$50,000.00. There is nothing consistent about the bank balances. I don't believe you can say that the increase in the bank balance proves intent to evade taxes.

Now, what has Mr. Palermo done affirmatively, at the moment, not looking from the standpoint of what the Government has produced or proved, but what has Mr. Palermo done or said which tends to

deny the existence of intent? Well, first of all, as I mentioned before, he has categorically denied any intent while on the stand. In order to find Mr. Palermo guilty of tax evasion you have to say that he committed perjury up here on the stand. And secondly, although Mr. Bantz says this hasn't anything to do with it, he has fully and completely co-operated with the Internal Revenue Service. They have been given all the information they asked as to sources of income, assets. They were given net worth statements and profit and loss statements and he has given them full opportunity to examine every record that he had in his possession. And along that line, as testified yesterday, Mr. Blankenship came to see him in the fall of 1954 and asked him, "How much money did you have in the bank?" And he said, "here at White Salmon I don't know." And he said, "I will go up and get the bank statements and I will bring them down." And they [610] compared nothing right then. And he told them that he had an account down at Stevenson and he didn't know how much he had in it but he could go down and find out. Mr. Palermo said that he thought that his gross was correct on his income tax returns and his books and the net was correct and that his taxes were correct. And Mr. Bates who made out the returns and makes out 150 returns per year said in his opinion those figures were reasonable. Now, if Mr. Bates who made out 150 tax returns a year and makes out returns for other loggers would figure that those gross and net and tax figures were reasonable, is it

logical that Mr. Palermo not think that they are reasonable?

Again, what is the difference between this case and a tax evasion case, a logical tax evasion case? First of all, if Mr. Palermo were going to evade taxes and was going to attempt to get away with some money from the United States of America, wouldn't he follow the normal procedure of having bank accounts in widely separated areas or under assumed names, or cash stuffed away in safety deposit boxes or stuff like that? We don't have any of that here. What did he do? He put practically all of his money in a small-town bank at White Salmon in his checking account. Is it logical that a man seeking to evade taxes is going to put all that money in a checking account in a small-town bank? And he didn't make any effort to conceal the existence of that bank account? There [611] is a financial statement in evidence here given in 1953 in which he put down that he had \$50,000.00 in his bank account, his checking account. Now, is Mr. Palermo, seeking to evade taxes according to Mr. Bantz from 1950 to 1953, going to go across the street or wherever it is in White Salmon to one of the men he knows—and he knows an awful lot of other people in that small town—is he going to go over there and put down that he has \$50,000.00 in his checking account when he is trying to keep that information from becoming too public because if it does become too public he might get in trouble with the tax authorities? That is not logical.

Nor did Mr. Palermo keep separate accounts, one

for his personal and one for his business. He just dumped everything in there.

Again, with reference to the accounts in the banks during the period of the indictment, out of \$447,-371.00 that he earned, he put \$437,000 of it in his bank account. And the Government says that that is the way a tax evader would act. I submit to you that it is not.

Again, he received all of his money by check. He didn't have anybody paying in cash. He got everything by check and his sources of income were few.

Now, a man might conceivably think that he could get away with some money from the United States Government if he did a big cash business, by putting \$5.00 cash in the tax and [612] saying that that is Uncle Sam's and put \$5.00 in his pocket and say that is mine. But look at the evidence. In 1950 he had 2, 4, 6, 7 sources of income all by check. In 1951 five sources of income all by check. In 1952, twelve sources of income by check; and in 1953, five sources of income all by check. Not only all by check but all from mills in the immediate vicinity where he lived, and large checks.

Now, does it appear logical to you that Mr. Palermo, having that few sources of income who are all paying him by check and he signs his name on a check and he puts it in the bank account and/or cashes it and it goes right back to the man who wrote the check to him, some of these large saw-mills, does it sound logical that he thinks that he can do that and cover up and conceal those sources of income, and not report income and hope to get

away with it, with that few sources? As I say, it is not logical.

Again, he did practically all of his own business by check himself. He wrote checks out of his bank account. He didn't receive a check and take it and cash it except in a few instances for the purchase of either some groceries or some items down in Vancouver, Washington, and Portland, Oregon, where people wouldn't accept checks from him because he was a logger. The vast majority—practically all of everything that he purchased or paid for came right out of his checking account at White Salmon. If he bought timber he paid his [613] check. If he bought trucks or bought a loader or if he bought a car, anything he did, he did it by check. He kept a record of it and the checks are in evidence. Is that the actions of a man attempting to conceal his income?

Nor did he take checks out and buy items from people by indorsing the checks over to them and buying something for himself or some asset that he could hang onto. He did none of the things that logic tells you he would do if he sought to evade taxes. As a matter of fact, for everything that he spent money—practically everything that he spent money for went out by check. Again, did he hide any of his assets? In other words, did he buy something that wasn't readily discoverable? Because that, I submit to you, is the logical approach of a tax evader.

What did he buy? He bought the house where he lived and he bought some rental houses over at

White Salmon, equipment for his logging company. He bought some stock in a gold mine. I don't know whether it has anything in it but in any event he bought it from people at White Salmon. It is a corporation and the president lives at White Salmon. There was nothing that he took and purchased either under an assumed name or anything else and hid. He unfortunately bought a hotel right across the river at Hood River. And so, again, he didn't follow the logical approach of purchasing assets and hiding them. [614]

Again, what would a man seeking to evade taxes do with reference to his records? If he thought he was going to get away with it, and anybody—I assume that anybody that tries to violate the law and thinks he is going to get away with it when he starts it, wouldn't he destroy records and wouldn't he do away with records? He hasn't. They are right here, his checks, his books, deposit slips, and cancelled checks and statements. Again, with reference to Mr. Palermo, you saw him on the stand yesterday afternoon. You have received some impression of what kind of a man he is. We had character witnesses and I think that those character witnesses testified completely honestly. They have all known him for a long time in a small town. I don't know how many of you have ever lived in a small town but I imagine that is one place where a reputation is important, because I live in a small town myself and you get talked about. It might be good and it might be bad but everybody knows everybody else's business. And his reputation has been and is all right, according

to the testimony, for honesty and truthfulness and has a law-abiding character, anywhere from favorable to excellent; and in addition to that, two of the witnesses said that that was also their personal opinion. Jolly Sprague testified to that effect and he has known Mr. Palermo for a long time. And these witnesses were whom? Mr. Bates, the man who made out his income tax returns, so testified. Of course, his [615] father-in-law testified that way. I don't know whether his mother-in-law would have testified that way but his father-in-law believes that his reputation is a good one. Marion Babb, who is the manager of the bank, Jolly Sprague, as I said before, Mr. Crowe, the Klickitat County Commissioner, Mr. McCoy, the insurance man, and Mr. Reed, his attorney.

How does a man get a reputation? He gets a good reputation by being a good man. And does it again sound logical that a man who is now forty-eight years old, and in 1950 would have been forty-one years old, that that man will live until he is forty-one years old in 1950, and forty-eight in 1957, and establish a reputation for honesty and for truthfulness and for being a law-abiding citizen, and then here he is a tax evader? It isn't likely. Somewhere along the line a man will do something if he is criminally inclined that will show up, and in order to find Mr. Palermo guilty you have to say that he is criminally inclined.

Now, in addition to that, Mr. Bantz says that these people testified that they didn't know that he

had under-reported so much money. Well, that is not exactly what the witnesses testified to. One of them testified that he did not know that during the years 1950 to 1953, but it is a cinch, ladies and gentlemen, that those people have known ever since this man was indicted, and the witnesses certainly know it from having been up here in court. [616]

What do we have as a man here? We have Mr. Palermo who is, and has been all of his life, a hard-working logger. There is no evidence at any time with this money that he was making that he was living high and spending money on himself in large quantities, gambling and drinking and anything else. We admit that the money was piling up there but what was Mr. Palermo doing? Was he trying to hide it or do anything else? No, he was just out working in the woods.

The Government contends that Mr. Palermo is an astute businessman. Well, I ask you, would a businessman try to keep his own records where without any prior experience or business on his own, where he had been nothing but a truck driver in 1930 and a sawmill worker from 1930 until 1947, he had been a truck driver and working in the sawmill and he never had any experience on books or anything else, would an astute businessman try to keep his own books on a business grossing over \$100,000.00 per year? Would an astute businessman buy a hotel without asking anyone for advice where that hotel, as he subsequently learned, that the operators had gone into bankruptcy? He got no information at all about whether it was a going busi-

ness or not, and he bought a hotel thinking he could operate it, and he never had even run a hotel. And how did he end up? He lost \$12,000.00 per year cold cash while he had it. \$17,000.00 per year including depreciation. Is that an astute businessman or is that a [617] man who is trying to evade taxes? Would an astute businessman buy cars on conditional sales contract with \$50,000.00 in his bank account? Now, why? It isn't logical. If he has got \$50,000.00 in his checking account, why didn't he pay cash? What did he do? He had to pay finance charges from GMAC and payments. And certainly he wasn't hiding anything on his Cadillac; and certainly it isn't a crime to own a Cadillac, ladies and gentlemen. It never has been and never will be. But he bought a Cadillac for \$1,577.00 and a trade-in. Now, if he could write out a check for \$1,577.00, couldn't he sit down and write one for the balance which was a little over \$1,000.00? He couldn't hope to possibly hide the fact that he had anything in the bank, that he had money in the bank, by not writing an amount for \$1,000.00 for the additional payment. And it was just like he said, that he was a truck driver and he had earned nothing until 1947 and then he got to earning that money, and he had thought nothing about buying cars on conditional sales contracts. He thought nothing about it and just went ahead and bought on conditional sales contract.

And so I say what we have here is not a case of a man wilfully trying to evade taxes. We have a man who worked for somebody else for seventeen

years and driving a truck, and he got into the logging business and he started making more money in one year than he probably made in the [618] seventeen years that he was driving truck. Now, if he had been a logger on his own for twenty years making this kind of money and then all of a sudden this money didn't all show up in his books, then I would agree with Mr. Bantz. I would say yes. There would be a case of tax evasion because there is a man that has had experience and knows how much he made and knows how much he can expect. But we don't have anything like that. All we have is a working man who started making money and didn't know what to do with it. He had too much of it. And I would say that it is probably as true in the case of Mr. Palermo as it would be you or me if we were given the responsibility of taking care of \$100,00.00 per year just like that after having nothing but \$4,500.00 per year as wages where your taxes had been withheld from you and you were given to suddenly take care of it, and you are out working in the woods and seeing that those logs are cut down and sold I would submit without any past experience. The omissions as they occurred here are logical and are logical from the standpoint of innocence and not from the standpoint of tax evasion.

As I said to you, I submit that Mr. Palermo is innocent, and as I also told you I would like to have you believe that completely, too. But I am not asking that. I am asking only that you find a reasonable doubt, and when you retire to the jury room I request that you look at all of the [619] evidence, as

I have reviewed it here for you, and I think you will have to come to the conclusion that there is a reasonable doubt. Thank you.

The Court: The court will take a ten minute recess.

(Whereupon, after the morning recess the following proceedings occurred:)

PLAINTIFF'S CLOSING ARGUMENT

Mr. Bantz: Your Honor, Ladies and Gentlemen of the Jury, Mr. Moore and Mr. Velikanje: I have again a few minutes to discuss this and rebut any part of the discussion I desire by Mr. Moore, which I thought was very good. But I want to start out by saying: He apparently relies a lot on logic. I have never understood any criminal case and I don't think you can understand any criminal case when it comes to logic. If they were logical we would never have a criminal case. It is the type of thing that you can never put your finger on that makes someone do something. If they were logical about it they would say that they would do it A, B, C, D, and they would do it that way, but in criminal matters in considering a criminal case logicalness has never much to do with it. I have never felt that in any criminal case where you have to show intent in their actions that logic enters into it. I also want to say that I don't have to say to the jury and the court that the man is criminally inclined as a defendant. That is going a little bit further [620] than I want to go in one of these cases. We must

prove our case beyond a reasonable doubt and the Court will instruct you that you must find beyond a reasonable doubt, but I am not saying that we must—in fact, I am denying that we must prove that he was criminally inclined, but we must prove that he did those acts and did them beyond a reasonable doubt, because criminally inclined is something that each of you would have your own version of what that meant. We have to show the intent and I think we have shown it by a scheme and his acts.

Mr. Moore says because he made a mistake that doesn't make it a crime. And he says he is not experienced in business. How long do you have to go along to be experienced? Here is a man who for the seven years we have talked about certainly was experienced by the end and by the end of 1953 was certainly experienced. I am not saying that Mr. Palermo made one mistake and I am not saying that he made two mistakes. I am just saying that he made 99 out of 235, and some time along the way we have got to get to the point where it steps beyond being a simple mistake.

Now, by a reasonable doubt, if there is a reasonable doubt, he is not guilty if there is no intentional and wilful violation of the law, and there must be an intentional violation of the law. Now, I ask you: How many years do we have to go along to show what it is. For the seven years [621] we showed it, 1948 to 1953 and part of 1954, we showed the same pattern. Sure. Maybe he could make a mistake one

year. I wouldn't deny it myself and I think that the Judge would never let us get to the jury if it is one year under the circumstances; but we are talking about four indictment years and two years ahead of time and one year afterwards that the defendant did exactly as he desired. He put in his books and records exactly what he wanted to put in there and report on his income tax return.

How simple can it be? He has a book and you can have it in the evidence and it says "Receipts." He knew who his customers were there and he listed those that he wanted, and when he got tired he did not list anything. And that book is in evidence, and that book and record is exactly what came out in his income tax through the intermediary of an accountant or individual who made up his income tax. And then he says, "I am not responsible for the other 99."

Mr. Moore says that the amount of money has nothing to do with it. The amount of money is one of the circumstances you can take into consideration in this trial. And the evidence here of the amount percentage-wise, sure, when there is fourteen per cent when you get to dealing with \$400,000.00, it isn't a large amount of money, but certainly as he went along those years, I say that it is a consistent pattern, it is consistent with a pattern and scheme in this case right [622] down to the last degree.

Now, apparently he wants to feel that we should put some blame on Mr. Brown for 1954 when they were \$4,960.67 off. It appeared to me that the rec-

ords that Mr. Brown put in, which were Exhibits 66 and 67, and the others Mr. Brown made up, he made an absolute disclosure to Mr. Brown—Mr. Palermo did—of what he wanted to. Mr. Brown went to the bank and he looked everything up and when he didn't come up with \$4,960.67, it is because Mr. Palermo didn't record it in his books. There would be no money in the books if he didn't put it in his books and he had been paid that money and he didn't have it in his books. He said it is a mistake. It is a mistake of over \$100,000.00 for those years.

Now, Mr. Moore says we have some discrepancies. He says it is \$400,000.00, and I am using \$500,000.00. I am using the figures of 1948 and 1949 because it showed a pattern, the amount. He is not being charged for those years. But we must prove that he evaded income tax by a substantial amount. We have charged him with a substantial amount and he evaded taxes in a substantial amount, and certainly we have proved a substantial amount.

Now, he told you about his being a truck driver and he didn't know what a dollar was like. Do you recall what he had in 1953? The lowest amount he had in the bank was \$58,000.00 and the highest was \$98,000.00. It varied but it [623] didn't vary too much; it didn't vary where he had \$200.00 and \$500,000.00. He always had a considerable sum in the bank. He knew he had a considerable sum and he was dealing in large figures, and yet he didn't report the large figures. It is all a part of the case and the over-all picture. I don't want you to under-

stand that I am saying that because he had \$50,000.00 in the bank he is guilty of anything, and if he is guilty of anything it is because he had \$50,000.00 in the bank. That doesn't mean that they checked him because he had that much money in the bank because if they checked everybody with \$50,000.00 the Internal Revenue couldn't get around the country. But if he had \$50,000.00 didn't that poor logger know it? Yes, certainly he had cash in the bank and that certainly means one thing to you as it does to me, that he knew that he was making a large amount of money along the way.

Mr. Moore says he suddenly started making money and he couldn't account for it. All I could say is that in 1948 and 1949 he said he didn't make any money. He kept track of that so he could take it off of his tax return in 1948 and he made \$1,800.00 in 1949 and he kept track of that. And then he had an income in 1950 where it became substantial, but he still had the first two years of practice of withholding checks each year right up to the indictment years, and he certainly had enough practice of withholding so that by the [624] time 1953 came around there was just enough checks on his books and records.

I admit that he co-operated with us. From the time we started investigating here we had looked at his books and records. We don't ask him to turn everything over. He knew that there was something wrong. He co-operated. He co-operated after we found out he had evaded his income tax. Then he found out that he had better try and clean his skirts.

Now, another thing, he says he hasn't attempted to hide anything because he is dealing in checks. I am not claiming he is dealing in pinballs or anything else except checks. These checks. And that is the only thing he could deal with. He has dealt with twelve or fifteen people. They are the people that deal in checks and he couldn't get any money any other way. If he went down and said, "Give me \$6,000.00 in cash," they would faint. He has to deal in checks. Now, there is no crime that he cashed the checks and kept the money in cash. I do that myself and you do that yourself.

What we ask you is to take a look at the checks in evidence. See where they are cashed and see the number of checks that are cashed and check them to compare with the number of checks that aren't reported. They are not large checks, \$240.00 and checks like that. It isn't in itself a guilty thing to do that. It is just one thing, and I am [625] talking about the amount of money and how he did it and how he handled his books and records.

Now, he says that he apparently is not a businessman, he is not an astute businessman. How can we hold him responsible for his actions when he is not an astute business man? He is a better businessman than I am. He is a better businessman. When he started out in 1947 he had a net worth of \$4,800.00 and admittedly takes that money and has the amount of money that we find by the evidence. He buys a hotel and he lost \$12,000.00, you remember, and he had it for the purpose of making money. He says he sold the hotel and got a motel and a piece of

property and some cash. He is a pretty good businessman and he knows the value of a dollar.

He knows how to keep his books and when he wanted to put a check down he put it down and the next time it did not get in his books and the next time he would not account for it in his bank account, and he wants us to believe that he simply forgot it, when he did it in 99 out of 235. To me it is beyond the scope of a mistake. Each year it is the same pattern.

Another thing, Mr. Moore says if you are going to find him guilty you have got to find him guilty of perjury. I am not charging him with perjury. I have not had a defendant that gets up on the stand and says, "I did it," and admit the whole [626] thing.

Naturally he is supposed to deny it and that is why he is standing trial, and he is not being tried for perjury if you can find him guilty. If he is going to admit it, he would have admitted it a long time ago and not admit it at the trial.

Now, another thing, he says that Mr. Bates looked at his returns and found them reasonable, and says there was reasonableness about the returns because it looked like his gross and net profit was about the right percentage. You know that the only fellow that knew whether it was reasonable or not was Palermo himself. Each year, say he takes in \$6,000.00 income and he would have another \$10,000.00 in his hind pocket, he is the only one that knew about it because he didn't tell anybody else about it. If he had told anybody else about it, we wouldn't be

here today, because each and every one of the people that made out his income tax reported everything that he gave to them.

There is no question about expenses. He reported them all the time. We are not taking a dime away from him as far as that is concerned. All we ask is that he report the money he made, and we want him to pay tax on that other \$20,000.00 out of the \$100,000.00 that he put in his hind pocket.

We are alleging here that he wilfully and with intent to do it, concealed it and evaded his income tax. and if we [627] haven't proved it you should find the man not guilty, that is if we haven't proved that he wilfully and knowingly had the intent to evade his income tax you should find him not guilty, but if we have proved it you should find him guilty, and you have that duty to make your decision from the evidence. It is a tough job. It is a tough job for all of you. Mine isn't a tough job. I get paid every month. But you have the duty of arriving at a verdict in this case and stand up to the courage of your convictions. And in this case I say we have proved that the man is guilty beyond a reasonable doubt because that is the duty I have to prove it as prosecutor for the United States of America.

Again, I want to just hinge a moment on the matter of reputation. Undoubtedly, his reputation is good. He says that these men have known about what he has done that came out in the trial. That wasn't my idea of the testimony at all. I don't think I went into it at all, and I don't think anyone else knew about it at the time that they talked to

the other people. Do you mean to tell me that they come up here when they learn in the indictment—the indictment says he did it wilfully and intentionally—do you want them to believe the indictment, that isn't the intention that they believe the indictment, but if they believe the indictment that he stole the money for four years, then that is incorrect to come up here and say that the man has a good reputation [628] when he stole money for four years. How could they know his reputation when they didn't know what he had done there and admittedly so in this court.

Now, they brought out that he had a Cadillac. I owned a Cadillac myself and I didn't pay quite as much money for it myself, and I don't want you to feel there is anything wrong when it is put in the evidence that he bought that on conditional sales contract. But you look at the income tax where he puts every dime down of expenses and he pays his income tax on the money that he actually made during the year. There isn't anything wrong there at all. It is a pretty good business method to do it that way, when you pay sixty per cent of the money that is net, like he was making \$40,000.00 that year, the expenses come right off of the top and he can have his money in there. There is nothing wrong in that and it is not the way of a bad business man. This is done all the time. And people go out and borrow money when they have money when they need it for some purpose and I think that goes to show he was a good business man.

Now, I want to just take a minute here and tell

you why it appears to me that there had to be a scheme and pattern that he had to follow. He had to enter in his books or keep track in his books of one check for every five days—if you will just sit down in the jury room with a pencil and paper when you get there—it was one check for every five [629] days or maybe a little less than that. One check every five days during those days and he could have kept track of it if he wanted to. And is that a complicated set of books? Every fifth day just put in your book that you got a check from Joe Blow. That was all we wanted to know here. Nothing else. If he had just entered the checks in his book as he thought he was doing we would be out of here. Just one check every fifth day. And his wife said he spent four nights a week checking his books over. His wife said he spent a great deal of time on it. And he wants us to believe that he inadvertently left out 99 checks out of 235 over a period of four years.

Now, I just want to say that during the indictment years Mr. Palermo received an average of thirty-seven and a half checks, some years more. They are in the summaries. It is an average of thirty-seven and a half checks, and he averaged sixteen and a half that he didn't account for. And so make it thirty-eight and seventeen for round figures. He received 38 and didn't account for 17 of them. That is a little bit over forty per cent. Now, I am not talking about dollar values that he didn't put them in the bank, but if you sit down and look at the figures percentage-wise, it certainly follows a pat-

tern in my estimation of what he intended to do right from the start from 1948 and 1949 through the indictment years. [630]

Now, in closing, I want to say that you have a tough job. You are going to get the instructions now from the Court on the law, and I ask you to pay close attention. They are complicated for the lawyers to listen to and get the full meaning out of them, and it is a tough job for you to get the whole meaning of them. The Court will give you the law and you will go to the jury room and take a verdict sheet in there, and after you have had due deliberation you have two choices. You can either find the man guilty or not guilty. There are four separate counts. Each count is a separate crime. I believe you will be instructed as to that. In other words, the Year 1950 is a separate crime and the Years 1951, 2 and 3 are each separate crimes. I ask that you take care in going over each year and consider them. You may use, as I understand what the Court will tell you, you may use the years 1948 and 1949 and another year 1954 to show what his pattern was, and not as to guilt as in the years 1950 through 1953, but how he did it in other years.

I want to tell you that it has been a pleasure to have a case that goes in as easily as this. And now you come to the toughest part of all of this, and that is to make up your mind. I ask that you be fair with the defendant. The matter of him being innocent goes right with him until you find that he is guilty, if you do so. But I also ask that you be

fair to the United States, which is the plaintiff, and [631] if you feel that he is guilty, that you have the courage of your convictions to bring in a verdict of guilty, and you must bring back a unanimous decision of guilty. A unanimous decision is required, that is the decision of each and every one of you. And I want to thank you for your close attention while I have been talking to you here during the trial for the past five or six days. Thank you, Your Honor.

INSTRUCTIONS OF THE COURT

The Court: Now, Members of the Jury: We are at last reaching the final stages of this lawsuit. It is my duty to instruct you on the rules of law that you should follow and some that will help in finding out what are the basic issues and area of disagreement here, and then the case will be submitted to you for your decision.

Now, I wish it were possible for me to talk to you as I am now in every day simple English and tell you the law and give you your guiding instructions in that way, but unfortunately it isn't possible for me to do so. I have the duty of accurately and fully defining for you and stating to you the elements of this offense, the degree of proof that is required and define such words that must be accurately defined or I will be in trouble with the higher court sooner or later; and while I give part of my instructions orally and off of the cuff as I am now, the more difficult ones I will write out

and [632] read to you for the reason that I wish to have them complete and accurate and state the rules of law in the way that I intend to have them stated.

Now, the burden of a juror is the difficulty of his task which is greater in Federal court than it is in state court in this matter of receiving and understanding and attempting to follow the Judge's instructions. In the state court the instructions are typed out and a copy of the typed instructions is given to the jury to take to the jury room, and then you can sit there and if there is any doubt about it you can turn to them and read them over. That isn't done in Federal court, and the instructions may be wholly oral or partly oral as they are now, or they may be partly written, but they are not all written out in typed form so that you can have them for reference, and you must as best you can, rely on your memory in determining what the instructions were, and so by remembering what the case is you can apply the instructions to the facts.

Now, a Judge in the Federal court has the power if he chooses to even comment on the evidence, and I have to do it to some extent by trying to point out to you what is in dispute, and what the meat of the issues is; and it is that part of my instructions where I comment in any way upon the evidence and testimony, you are not bound by that. Those instructions you may consider them but you are not bound by [633] them because after all as I told you at the outset of the trial, the jury is solely responsible for finding the facts and that is your sole duty

and responsibility, and nobody can relieve you of it, and it is a part of the jury system. I am not going to tell you what witnesses to believe and what weight to give to the testimony and the facts. I am simply going to point out to you what the basic issues are and then give you the rules of law and leave it to you to find the ultimate fact in issue whether the defendant is guilty or not guilty. I hope before I go ahead with the formal part of my instructions that you will not be confused by these terms that are more familiar to the lawyers and judges who necessarily are more familiar with them.

I want you to bear in mind all the time during the instructions that when I say Plaintiff United States Government, that is the Government, and the defendant is Joe Palermo, of course, or the accused in the case.

Now, the issues of fact which you are called upon to decide as jurors in this case are really essentially simple and narrow. This defendant is charged with knowingly and wilfully attempting to evade part of his income tax by making false and fraudulent income tax returns for each of the calendar years 1950, 1951, 1952, and 1953, covered respectively by Counts I, II, III, and IV of the indictment. It is not disputed—indeed, it is conceded—that the defendant's [634] income tax returns for those years were incorrect in that they understated the amount of his gross income at least in the amounts set forth in the counts of the indictment.

There is, further, no controversy or dispute as to how the understatement occurred. The testimony is, you will recall, that Mr. Bates made out the defendant's income tax returns for the indictment years and Mr. Bates made out the returns from the information and figures which the defendant gave him, and the information and figures that the defendant gave him came from the defendant's books which are in evidence here. The reason for the understatement was that the books were incomplete and incorrect and they were incorrect and incomplete for the reason that the defendant failed to post or enter all of his income in the books. Large amounts of income in the form of checks from purchasers of his logs did not show up in the books at all, and since Mr. Bates used the information from the books and used this on his returns, the returns were incomplete and incorrect because the books were incomplete and incorrect. And the thing you have to determine is whether the defendant acted honestly, innocently and in good faith, or whether on the other hand he acted in bad faith with an evil purpose to cheat or defraud the Government of part of the income tax when he knew he owed the tax. Of course, you must bear in mind, as I shall later on instruct you more in detail, that the plaintiff has the burden of [635] proving the guilt of the defendant beyond a reasonable doubt.

Since the defendant has pleaded not guilty to the indictment, to each of the four counts of the indictment that he is charged with, this imposes upon the Government the burden of proving each and

every material allegation of the indictment to your satisfaction, beyond a reasonable doubt.

The defendant is presumed to be innocent. The presumption is a real thing. It is a real right which he has. It is no mere fiction which either the Court or the jury may ignore. It is one of the defendant's substantial and important rights. It attaches to the defendant and continues with him throughout all phases of the trial and through all the stages of your deliberations as jurors until you have become satisfied from the evidence of his guilt beyond reasonable doubt.

Now, this term "reasonable doubt" as used in these instructions means such a doubt as will cause a reasonable, prudent and considerate person to hesitate or waver before acting upon the truth of the matters charged or alleged. Such a doubt may arise from the evidence in the case or from the lack of such evidence. You will not be swayed, moved or become frightened by doubts which are imaginary, arbitrary or capricious. On the other hand, you will not convict in the face of doubts which are real and substantial. If, after a fair, candid, common-sense consideration of all the [636] evidence in the case, you can say upon your oaths as jurors that you have an abiding conviction of the truth of the charge to a moral certainty, then you have no reasonable doubt and should convict. But, if you have no such conviction of the truth of the charge to a moral certainty, if you entertain doubts for which sensible and satisfactory reasons can be given in your own

minds, you must give the defendant the benefit of such doubt and find him not guilty.

Now, an indictment is but a formal method of accusing a defendant of crime. It isn't evidence of any kind against the accused and does not create any presumption or permit any inference of his guilt.

Now, Ladies and Gentlemen of the Jury: To give you the elements of this offense, first let me point out that the defendant, of course, is accused here of violating a Federal Statute, and so far as you need to consider it here, that Federal Statute provides in part: Any person who wilfully attempts in any manner to evade or defeat any tax imposed, or the payment thereof, shall be punished as the law provides:

Now, in this case the tax referred to is income tax.

The essential elements of each of the charges made herein by the Government, and there is one charge on each count, of course, are:

1. That there was owing to the Government more income tax than that shown in the return made by the defendant during each of the taxable years charged; [637]
2. That the defendant knew that there was owing more income tax than shown by the returns;
3. That he wilfully attempted to evade or defeat any part of such tax by filing or causing to be filed a false return.

If you find the existence of each of these elements beyond a reasonable doubt, you should find the

defendant guilty. If you have any reasonable doubt as to any of these elements, you should find the defendant not guilty.

Now, you will observe that one of the elements of the offenses charged is that the defendant wilfully attempted to evade or defeat payment of his just tax. Wilful attempt means an intentional one, done with bad purpose or evil design to evade payment of income tax due, and it is necessary that the Government prove that in filing his income tax returns the defendant thereby, with such purpose or design intended to evade or defeat the payment of some portion of his income tax. However, it is psychologically impossible for you to enter into the mind of the defendant and determine directly the intent with which he acted. You may therefore determine the purpose and intent from consideration of all of the evidence in the case. In order to secure conviction, it is necessary to prove that the conduct of the defendant was wilful.

If it appears to you that the defendant did not act [638] wilfully, but mistakenly, and there was no wilful intent on the part of the defendant to evade taxes, but the error resulted from honest inadvertence and mistake, then it is your duty to acquit the defendant. But in testing whether or not the action of the defendant making the returns was wilful, you are to take into consideration all the facts and circumstances, including the information that the defendant furnished to the person who made out his income tax returns, the defendant's method of keeping books and doing business, his

failure to record all of his income in his books, and you shall then determine whether the defendant made a good faith, honest disclosure of his income in his tax returns or a dishonest disclosure which he knew to be false, and which he made with an intent to evade the payment of part of his income tax.

Now, even gross carelessness, recklessness or negligence in the preparation of an income tax return, or honest errors of fact or of law, is not fraud, and before the jury can infer the existence of fraud, in this case they must find beyond a reasonable doubt from the evidence that the defendant wilfully, with intent to evade his Federal income taxes, filed or caused to be prepared and filed, a materially false income tax return.

Now, the defendant is here charged with attempting to evade his income tax for the years 1950, 1951, 1952, and [639] 1953, as I have stated. Those years only are involved in the indictment.

The Court nevertheless has permitted evidence of like or similar transactions by the defendant for the years 1948 and 1949. Such evidence is to be considered by you only insofar as it bears upon or relates to the intent of the defendant if you find that he failed to pay the income taxes involved for the years involved in the indictment. In other words, such evidence was admitted for the purpose of throwing light on the intent of the defendant and the same thing would apply to all evidence. There was here another year 1954 and the same rule would apply.

Although there are four counts in the indictment, the defendant is entitled to the same kind of trial

on each count as if he were being tried on each count separately. When you come to deliberate upon the innocence or guilt of the defendant, you will consider each count separately and consider and weigh the evidence as related to that count as if it were the only count in the indictment, and you will return separate findings in your verdict as to each count.

You are the sole judges of what is the evidence and of the credibility and weight which is to be given to the different witnesses who have testified upon this trial. A witness is presumed to speak the truth. This presumption, however, may be repelled by the manner in which he testifies, by the character of this testimony, by his motives, or by [640] contradictory evidence.

In weighing the testimony of a witness, it is improper for you to consider those factors of human nature which, either with or without any wrongful intention, may obstruct the giving of perfectly true testimony. Those factors are suggested by these questions: Did the witness have full opportunity to learn the truth? If so, did he have the intelligence and purpose to ascertain the facts? What was the advantage or disadvantage of his point of observation? Does the evidence show that the witness had a motive for favoring or an inclination to favor any party? Did he appear to be fair and candid, or otherwise? Was the testimony reasonable and consistent within itself and with uncontradicted facts?

Should you consider any of these questions, either in your own private reasoning or in open

discussion, you must look for an answer to the evidence admitted in the trial of this action and your observation of the witness as to his appearance and demeanor while he was testifying.

In judging the credibility of witnesses in this case, you may believe the whole or any part of the evidence of any witness, or you may disbelieve the whole or any part of the evidence or testimony of any witness, as may be dictated to you by your judgment as reasonable men and women. You should carefully scrutinize the testimony given and, in so [641] doing, consider all the circumstances under which the witnesses testified, as I have heretofore recited them to you, and in addition to that, the relation that they might bear to the plaintiff or to the defendants, the interest they may have in the case, the manner in which they might be affected by the verdict, and the extent to which a witness is contradicted or corroborated by other witnesses or other evidence, if at all, and every matter that tends reasonably to shed light upon his credibility. If a witness is shown to have knowingly testified falsely on the trial touching any material matter, the jurors should distrust his testimony in other particulars, and in that case you are at liberty to reject the whole of the witness' testimony except insofar as it may be corroborated by other credible evidence in the case.

Now, an expert is an individual who by education, study, training, experience or observation has acquired special knowledge, skill or understanding

in a particular subject or field beyond that of the average person. The only experts who testified in this case were the accountants who were expert accountants.

Where witnesses qualify as experts in a particular field and are allowed to express opinions, rather than to testify to facts, those opinions are for the aid and assistance of the jury, but not for the purpose of invading its functions. The responsibility to decide rests upon the jury. [642] It is your duty to evaluate and appraise the testimony of a witness who expresses opinions precisely as you would evaluate and appraise the testimony of witnesses who testify to facts within their personal knowledge. The rules for determining the credibility of witnesses which I have given you in these instructions apply to expert witnesses as well as to other witnesses.

All evidence received in this case should be given such effect as the jury deems it to be entitled to receive.

There are two types of evidence from which a jury may properly find a defendant guilty of an offense. One is direct evidence, such as the testimony of eye witnesses. The other is circumstantial evidence, by which an inference of an unknown fact is drawn from the existence of known facts. The law makes no distinction between direct and circumstantial evidence, but simply requires that before convicting a defendant, the jury must be satisfied of the defendant's guilt beyond a reasonable doubt from all the evidence in the case. The neces-

sity to resort to circumstantial evidence to prove guilt in criminal trials is apparent.

Now, the purpose and function of evidence of good character and reputation is to raise a reasonable doubt as to innocence or guilt of a particular defendant, and such evidence is entitled to be considered whether the effect of the other evidence in the case is clear or doubtful. Evidence [643] has been introduced upon the trial of this case tending to show and to establish that the defendant is a person whose reputation for truth, and honesty, and as a law-abiding citizen, has been good. When this evidence is considered by you, along with the other evidence introduced at the trial, if a reasonable doubt is created as to the guilt of the defendant by the fact of his good character and reputation, he is entitled to be acquitted. If, on the other hand, you are convinced by all of the evidence, including character evidence, of the guilt of the defendant, you should not acquit him merely because the evidence shows he has a good reputation for the traits of character which I have mentioned.

There have been admitted in evidence certain exhibits consisting of summaries prepared by the witness Paul Simonson. Strictly speaking, these exhibits are not actual evidence, but they were admitted as summaries of other evidence in the case and they are admitted only for your assistance and convenience in considering the other evidence which they purport to summarize. Exhibits of this nature are permitted where they are based upon voluminous books, records or documents already in evi-

dence, in order to assist you in determining the ultimate facts or results shown by such books, records or documents. But you are reminded that it is the books, records and documents which are the evidence, and the summaries are admitted only to assist you in considering that [644] evidence. For that purpose, you are entitled to consider them.

What I have said about these exhibits does not apply to the testimony of the Revenue Agent who prepared them or to other accountant witnesses. Their testimony is evidence and it is to be considered by you as any other evidence.

Now, you are instructed that this is a criminal case and has nothing to do with the determination or collection of income taxes which may be due the United States by the defendant. The income tax liability of the defendants is a matter which does not concern you in this case.

Now, if I have said or done anything which has suggested to you that I am inclined to favor the claims or position of either the plaintiff or the defendant in this case, you should not be influenced by that suggestion. I have tried to be strictly impartial, and if any action or anything I have said or any expression on my part has seemed to indicate the contrary, you are instructed to disregard it.

At times throughout the trial, I have been called upon to pass upon the question of whether certain offered evidence should be admitted. You are not to be concerned with the reasons for such rulings and are not to draw any inference from them. Whether offered evidence is admissible is purely a question

of law with which the jury is not concerned. As to any offer of evidence that was rejected, you should not [645] consider the same, and as to any question to which an objection was sustained, you should not conjecture as to what the answer might have been or as to the reason for the objection, and you should disregard entirely any evidence or testimony that the Court has ordered stricken from the record.

Now, from time to time, the attorney for one or the other of the parties has interposed objections to evidence. Counsel not only have the right, but the duty, to make any and all objections which are deemed advisable or appropriate, and no inference or presumption should be indulged in one way or the other by reason of the making of such objections.

You should not consider as evidence any statement of counsel made during the trial, unless such statement was made as an admission or a stipulation conceding the existence of a fact or facts.

You should pay no attention to what the punishment may be in case you find the defendant guilty. The determination of punishment is the sole responsibility of the Court, and the jury should not be concerned with it at all.

In your deliberations, it goes without saying, there is no room for sympathy, sentiment, prejudice or passion. It is your duty to weigh the evidence calmly and dispassionately, to regard the interests of the parties to this action as the interest of strangers, and to decide the issues strictly upon the merits. [646]

Now, when you retire to the jury room, Ladies and Gentlemen, you will first select one of your number as foreman. It will be the foreman's duty to preside over your deliberations, act as your chairman, so to speak, and sign your verdict as soon as you have agreed upon it. You will take with you to the jury room the indictment and also the exhibits which are admitted in evidence.

We have also prepared for your convenience a form of verdict, and it is quite simple and I am sure you will find no difficulty with the form, and it has the heading or caption of the case. It is entitled, "United States of America, Plaintiff, vs. Joe Palermo, Defendant, No. C-4569," and which is the Clerk's number, and it reads: "We, the jury in the above-entitled cause, find," and then a blank line, and then "the defendant, Joe Palermo," and then you will fill in whether he is guilty or not guilty as charged in Count 1 of the indictment and so on. Now, as to Count 1, if you find that the defendant is guilty, you write the word "is" in the proper space. If you find that he is not guilty, you will write the word "not" in there for the particular count and year; and the same thing is true and it has the same arrangement as to Counts 2, 3, and 4, and then there is a space for the foreman to sign it.

Now, your verdict must be unanimous in this case, that is to say, all twelve of you must agree to return a verdict. [647] And when you have agreed upon it, the foreman will sign it, and then you can let the bailiff know that you are ready to report.

Now, I will ask the bailiff to let the jury step out for a moment while we have some short proceedings in your absence.

(Whereupon, the following proceedings occurred in the absence of the jury.)

DEFENDANT'S EXCEPTIONS

The Court: In the absence of the jury the counsel may now take exceptions to the Court's instructions or failure to give requested instructions.

Mr. Bantz: The plaintiff has no exceptions, your Honor.

The Court: I think that about the only thing that the attorney for the plaintiff, the United States, would be to protest anyway, it wouldn't do much good.

Mr. Bantz: Yes, I know. Yes, I have learned that.

Mr. Moore: With reference to the instructions proffered by the defendant and not given, the defendant, first of all, excepts to the failure to give Requested Instruction No. 1, being for a directed verdict based upon the argument previously presented that the evidence as it has been adduced here——

The Court: By the way, Mr. Moore, I am sure you intended to make Proposed No. 1 to apply to all four counts [648] of the indictment, but through typographical error you have three counts there.

Mr. Moore: I am sorry, your Honor. I didn't see that. Could I correct that by interlineation?

The Court: It says three counts in my notes or my copies. I construed it to mean four, and I suggest that the Clerk line out the word "three" and write in "four" so it will be correct.

Mr. Moore (Continuing): —for the same reasons that I have set forth at the conclusion of the evidence, for the reason that this does not exclude every reasonable hypothesis other than guilt, and the instruction therefore should have been given.

The defendant further excepts to the failure to give proffered Instruction No. 9, reading:

"If the evidence in this case can be reconciled either with the theory of innocence or guilt, the law requires that the defendant be given the benefit of the doubt and that the theory of innocence be adopted by the jury. You will review all of the facts and circumstances in the light of this instruction."

It is submitted that the statement set forth in Instruction No. 9 is a proper statement of the law in that the evidence adduced here requires the instruction as the same may be consistent with either theory. [649]

The defendant further excepts to the failure to give proffered Instruction No. 11, reading:

"Unless there is substantial evidence of facts which excludes every other reasonable hypothesis but that of guilt, and if all the substantial evidence is as consistent with innocence as with guilt, then it is your duty to return a verdict of not guilty."

For the reason that the same constitutes a statement of the law and that the evidence requires the rendering of that statement to the jury.

The defendant further excepts to the failure of the Court to give Proffered Instruction No. 12 with reference to circumstantial evidence by reason of the fact that the Court gave no full and complete instruction to the jury with reference to the consideration of circumstantial evidence, and that offered Instruction No. 12 sets forth a proper consideration of the law for the jury.

“Defendant’s Instruction No. 12:

“Circumstantial evidence is evidence which tends to prove a disputed fact by proof of other facts which have a legitimate tendency to lead the mind to the conclusion that the fact exists which is sought to be established. It must be such as to exclude every reasonable doubt of the guilt of the defendant, and if it does not do so, or if you believe the circumstances to be as consistent with innocence as with [650] guilt, it is your duty to acquit the defendant.

“In order to convict on circumstantial evidence, the circumstances relied on must point so unerringly to the guilt of the defendant as to exclude every other reasonable hypothesis. The circumstances thus relied on must be proved by the United States to your satisfaction beyond a reasonable doubt, must be consistent with each other, and inconsistent with every other reasonable theory of innocence.”

I am not certain about this one, your Honor, so I better take exception anyway. With reference to offered Instruction No. 16, I don’t believe that the Court specifically instructed the jury that there was no presumption of guilt which will be drawn from

the act itself. I can't recall. Assuming that there was not, I am saying that they should be advised because that is the law with reference to this case.

“Defendant's Instruction No. 16:

“The filing of an incorrect or inaccurate income tax return is unlawful as to the defendant, only if the defendant did so wilfully, with knowledge of its falseness, and with intent to evade taxes. There is no presumption of guilt which may be drawn from the act itself—both knowledge and wilfulness must be established by the independent proof, direct or circumstantial.”

The Court: I am not aware of any case. Perhaps you [651] have some to cite where the court has held that it is error for a trial court in failing to instruct that no presumption arises from the act itself. They have reversed where the court has instructed that the presumption does arise, the presumption of guilt from understating the return.

Mr. Moore: I don't have any case that says that it is error not to instruct, your Honor. I merely have cases which say that proof of understatement does not raise a presumption of guilt, nor is it proof of intent.

Now, again, defendant excepts to the failure of the Court to give proffered Instruction No. 20 by reason of the fact that this proposed instruction also advises the jury that the fact of the filing of an incorrect income tax return is not sufficient in and of itself to convict the defendant, in that it sets forth the law relating to presumptions set forth in my preceding exception.

“Defendant’s Instruction No. 20:

“In order to secure conviction, it is necessary that the United States prove that the conduct of the defendant was wilful. The mere fact that an incorrect tax return was filed by him is not sufficient to in itself convict the defendant. If you believe the defendant did not act wilfully, but did act mistakenly, carelessly, negligently, or even recklessly, and that he did act in good faith without any wilful intent on his part to evade or defeat any income tax payment, or as [652] the result of inadvertence, misunderstanding, or even careless book-keeping, it is your duty to acquit the defendant.”

The defendant excepts to the failure to give proffered Instruction No. 21 on the same grounds set forth as to proposed Instruction No. 20. The same relates to the direction to the jury that there must be a specific intent to defeat or evade payment of tax due, and that that is a correct statement that there must be a specific intent to defeat or evade payment of tax due. Also with reference to the filing of the incorrect income tax return without ground for believing it to be unlawful, without justifiable excuse or careless disregard, do not constitute wilful intent.

“Defendant’s Instruction No. 21:

“You are instructed that in cases of this character, there is only one state of mind that can supply the intent necessary to sustain a conviction, and that is the specific intent to defeat or evade payment of the tax due; nor would the filing of a false return with any bad purpose supply the necessary in-

tent. The bad purpose must be to evade or defeat the income tax that is due. The filing of any incorrect return, without a justifiable excuse, or without ground for believing it to be lawful, or with a careless disregard for whether or not one has the right to do so, do not in themselves constitute wilful intent.” [653]

With reference to proposed Instruction No. 24, defendant excepts to the failure to submit that instruction or as is substantially set forth in that instructions, for the reason that in advising the jury of their determination of an intent or wilfulness the Court submitted certain factors to the jury for their consideration; that this proposed instruction includes additional facts.

“Defendant’s Instruction No. 24:

“ ‘Wilfully’ means knowingly and with bad heart and bad intent. It means having the purpose to cheat or defraud, or do a wrong in connection with a tax matter. It is not enough if all that is shown is that the defendant was stubborn or stupid, careless, or reckless, or negligent. A defendant is not wilfully evading a tax if he is careless about keeping his books and records. He is not wilfully evading a tax if all that is shown is that he made errors. He is not wilfully evading a tax if he acts without the advice of an accountant or lawyer, for there is no requirement that a taxpayer, no matter how large his income, should engage a lawyer or an accountant in the keeping of his books or the preparation of his tax return.”

The Court: That is the one that includes factors that are not in evidence in this case, by keeping a double set of books and concealing the [654] assets?

Mr. Moore: No; I am sorry, unless I have got the numbers wrong. This reads (reading Proposed Instruction No. 24, as above set forth for the purpose of these exceptions).

The Court: Yes; that is all right.

The Court: That is No. 24, is it not?

The Court: Yes.

Mr. Moore: And I take final exception to the failure to give Proposed Instruction No. 29 for the reason that the same is, I would say, a relatively short concise statement of the—that is the last one.

The Court: Yes; I remember that.

Mr. Moore: —of the situation that was being submitted to the jury and set forth in one instruction and briefly the law which they were required to consider in determining the defendant's guilt or innocence, and contained all of the factors necessary for their consideration as to the intent.

“Defendant's Instruction No. 29:

“The basic issue in this case between the Government and the defendant is the question of whether the admitted underreporting of income by the defendant was the result of a wilful attempt by the defendant to evade income tax for the years under consideration. The Government has the burden of proving to you beyond a reasonable doubt that the defendant did wilfully attempt tax evasion, which the defendant [655] denies. ‘Wilful attempt’ con-

sists of two elements, the attempt itself, and knowing criminal intent. In determining the question of 'wilful' before you may find against the defendant on any count of the indictment you must find beyond a reasonable doubt that at the time of the preparation and filing of defendant's income tax return for the tax year of such count, defendant had the specific intent to or bad purpose of thereby evading or defeating the payment of his proper income tax, that is, a criminal intent.

"The intent, if any, with which an individual performs an act cannot be proved by others, normally, except by circumstantial evidence. Certain acts or conduct may be used by you in making a determination of whether or not the defendant had such specific criminal intent, while other acts or conduct may not. Acts or conduct from which an affirmative wilful attempt to evade may be inferred are such as deliberate concealing of assets, keeping two sets of books, making of false entries, invoices, or alteration in books, covering up sources of income, deliberate destruction of records, and other conduct the likely effect of which would be to mislead or conceal. However, the fact of understatement of income, the amount of the deficiency of tax or income, or disparity between income received and income reported cannot be considered as a factor proving or tending to prove the specific criminal intent. No presumption of criminal intent arises merely because of the underreporting of income itself. [656] In addition, acts or conduct which are the result of carelessness, negligence, ignorance, or inadvertence may not be

used to infer the specific criminal intent because such acts or conduct would negative the existence of the necessary condition of intent itself.

“Further, in your consideration of such facts, if any be present in this case, it is essential, before you may infer specific criminal intent from any acts or conduct of the defendant, that such acts or conduct be consistent with the theory of the defendant’s innocence, and exclude every reasonable doubt of the defendant’s guilt.

“Therefore, your process of consideration of the element of specific criminal intent on each count should be as follows: First, determine whether or not you can find beyond a reasonable doubt the existence of acts or conduct on the part of the defendant, from which, as circumstantial evidence, you feel you might infer the existence of a specific criminal intent in the defendant to evade or defeat his income tax. If you find no such acts or conduct at this point, you must acquit the defendant without further consideration. Second, if you do so find, then determine whether those acts and conduct are consistent with the theory of defendant’s guilt, inconsistent with every reasonable theory of the defendant’s innocence, and exclude every reasonable doubt of the defendant’s guilt. If you conclude that these [657] three conditions exist as to such facts, then you should find one of the essential factors necessary to determine the defendant’s guilt—the existence of the specific criminal intent. However, if having found such acts or conduct to exist, you do not find that they are consistent with the theory

of the defendant's guilt, or if you do not find that they are inconsistent with every reasonable theory of defendant's innocence, or if you do not find that they exclude every reasonable doubt of the defendant's guilt, then or in either of those events, you must acquit the defendant."

(Whereupon, the following proceedings occurred in the presence of the jury:)

The Court: The Clerk will swear the bailiffs.

Now, the alternate juror will be excused, and since this is the last case you will be excused permanently. The principal jurors will retire to consider their verdict. [658]

Reporter's Certificate

United States of America,
Eastern District of Washington—ss.

I, Henry E. Neer, do hereby certify:

That at all times herein mentioned, I was Acting Official Court Reporter of the United States District Court for the Eastern District of Washington; that as such reporter I reported in shorthand and transcribed into typewriting the proceedings in the instant cause upon its trial commencing Tuesday, July 23, 1957, and ending on Tuesday, July 30, 1957; that the transcript covering these periods is a full, accurate and complete transcript of the testimony and the proceedings had.

Dated this 14th day of November, 1957, at Yakima, Washington.

/s/ HENRY E. NEER,
Acting Official Court
Reporter.

[Endorsed]: Filed October 30, 1957. [659]

[Title of District Court and Cause.]

CERTIFICATE OF THE CLERK

United States of America,
Eastern District of Washington—ss.

I, Stanley D. Taylor, Clerk of the United States District Court for the Eastern District of Washington, do hereby certify that the documents annexed hereto are the originals filed in the above cause as called for in Appellant's Designation filed on September 13, 1957,

12- 7-56—Indictment.

10-30-57—Reporter's Transcript of Arraignment.

Reporter's Transcript of proceedings at the trial.

All exhibits admitted (mailed under separate cover).

7-26-57—Defendant's Proposed Instructions, Nos. 1, 9, 11, 12, 16, 20, 21, 24 and 29.

7-30-57—Verdict of the Jury.

7-30-57—Judgment upon the Verdict.

7-31-57—Motion for Judgment of Acquittal or in the Alternative for a New Trial.

Reporter's Transcript of argument on motion.

9- 9-57—Order Denying Motion for Judgment of Acquittal of in the Alternative for a New Trial.

9- 9-57—Notice of Appeal.

9-13-57—Designation of Record on Appeal.

10-10-57—Order Extending time to file record on appeal.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at Yakima in said district this 27th day of November, 1957.

[Seal] STANLEY D. TAYLOR,
Clerk of Said Court;

By /s/ THOMAS GRANGER,
Deputy.

[Endorsed]: No. 15809. United States Court of Appeals for the Ninth Circuit. Joe Palermo, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Eastern District of Washington, Southern Division.

Filed November 29, 1957.

Docketed: December 6, 1957.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 15809

UNITED STATES OF AMERICA,

Appellee,

vs.

JOE PALERMO,

Appellant.

STATEMENT OF POINTS RELIED
UPON ON APPEAL

The appellant states that in his appeal to the United States Court of Appeals, Ninth Circuit, from the judgment entered in the above-entitled cause on July 30, 1957, and the Order Denying Appellant's Motion for Judgment of Acquittal or in the alternative for a New Trial entered in the above-entitled cause on 9th day of September, 1957, pursuant to the Rules of Criminal Procedure, appellant intends to rely upon the following points:

1. The Trial Court erred in failing to grant appellant's Motion at the close of the trial for Judgment of acquittal of appellant.
2. The Trial Court erred in failing to grant appellant's Motion, Post Trial, for Judgment of Acquittal.
3. The Trial Court erred in failing to grant appellant's Post Trial Alternative motion for New Trial.

4. The Trial Court erred in failing to give appellant's Instructions Nos. 1, 9, 11, 12, 16, 20, 21, 24, and 29.

5. The Trial Court erred in the admission of Exhibits Nos. 26, 27, 28, 29, 30, 33, and 34 over the objection of appellant by reason of insufficient and/or improper identification thereof.

6. The Trial Court erred in the admission over the objection of the appellant of Exhibits 1, 2, 14, 15, 22, 25, 26, 33, 34, 42, 43, 46, 70, 77, 78, 80, 85, 91 and 92, the same being irrelevant and immaterial.

Dated this 3rd day of December, 1957.

/s/ JOHN S. MOORE,

/s/ E. S. VELIKANJE,

Attorneys for Appellant.

[Endorsed]: Filed December 6, 1957.